

CENTRE INTERNATIONAL DES DROITS DE LA PERSONNE
ET DU DÉVELOPPEMENT DÉMOCRATIQUE



INTERNATIONAL CENTRE FOR HUMAN RIGHTS
AND DEMOCRATIC DEVELOPMENT

ROADS TO DEMOCRACY

HUMAN RIGHTS AND DEMOCRATIC DEVELOPMENT IN THAILAND

Vitit Muntarbhorn
Charles Taylor

Bangkok and Montreal
July 1994

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INTERNATIONAL CENTRE FOR HUMAN RIGHTS AND DEMOCRATIC DEVELOPMENT

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The International Centre for Human Rights and Democratic Development was created by an Act of the Parliament of Canada and officially inaugurated on 19 October 1990. It aims to defend and promote the rights and freedoms enshrined in the *International Bill of Human Rights* and encourage the development of democratic societies. Although it enjoys a collaborative working relationship with the government of Canada on many issues, the Centre operates as an independent and non-partisan institution. It works closely with citizens' groups, international organizations and governments around the world to strengthen civil societies and to empower people to participate fully in the social, economic and political lives of their countries. Directed by the Honourable Edward Broadbent, the Centre is governed by a 13-member international board of directors, chaired by Professor Gisèle Côté-Harper, Q.C.

Through its Canadian and overseas partners, the Centre provides financial, political and technical support to front-line organizations to help establish democratic institutions and practices. It plays an advocacy/educational role, both in Canada and abroad, speaking out about human rights abuses and advocating policies to reduce their incidence. The Centre has been active in global campaigns to restore democracy to Haiti and Burma, recognize women's international human rights and integrate human rights in international trade agreements.

The Centre concentrates most of its initiatives in 13 core countries - in Africa: Eritrea, Kenya, Rwanda, Tanzania and Togo; in Latin America: El Salvador, Guatemala, Haiti, Mexico and Peru; and in Asia: Burma, Pakistan, and Thailand.

The Centre considers the strengthening of civil society indispensable for the fulfilment of the democratic development aspect of its mandate because, in its view, there is no fully democratic society without the development of a strong civil society permeated by a culture of tolerance. It regards civil society in a given country as the sum of all non-family social institutions and associations which are autonomous, independent of the state and capable of significantly influencing public policy. Strong civil societies have four important characteristics: a) the poor are organized and politically influential; b) there are associations that are politically independent of the state; c) a culture of tolerance exists; and d) substantive equality of access prevails for all groups without discrimination based on gender, race, etc.

In a democratic political system, emphasis is put on representation, formal processes and institutions, such as political parties, elections and legislatures. In a democracy considered as a kind of society, civil and political rights are seen as vehicles to advance equality of condition, not simply of opportunity. In this sense, the building of civil society, expansion of democratic space, popular participation, effective control of the public agenda, just distribution of resources, and civilian control of the military mean progress towards democracy.

In short, a real democratic society is one within which all human rights are implemented and fully respected, not only civil and political but economic, social and cultural rights, as well.

This novel approach makes human rights and democracy parts of the same agenda. Struggling for human rights implies working for democracy. Building democracy is in turn implementing human rights. And defending democracy implies in fact promoting human rights. So much so that the respect vested, for example, in freedom of speech and freedom of association contributes, in the final analysis, to advancing a culture of tolerance, which is an underestimated and characteristic feature of a democratic society.

Using a framework based on international human rights instruments, the Centre undertakes democratic development studies and workshops to identify, in collaboration with its partners, national priorities for democratic development. The methodology used in the studies is based on the linkage between human rights and democracy and is summarized in the table below. The Centre has grouped internationally recognized human rights into four clusters: security, participation, welfare, and non-discrimination. In addition, this methodology takes into account political institutions. The Convention on the Elimination of all Forms of Discrimination Against Women is included as a key component. Gender equality is a fundamental democratic value. The methodology is both universal and flexible and therefore applicable to assessing democratic development in any country be it Sweden, South Africa or anywhere else.

We hope that the results will be useful to all those hoping to effect democratic change, be they members of Parliament or civil society groups, non-governmental organizations, or international actors. The studies and workshops also guide the Centre's long-term democratic development programmes and are used to provide a focus for democratic development done by other agencies with more substantial financial resources.

DEMOCRATIC SOCIETY INDICATORS

HUMAN RIGHTS	INTERNATIONAL LAW (ARTICLES)			
SECURITY	UD ¹	CPR ²	ESCR ³	CEDAW ⁴
Extra-judicial killing	3	6 (1)		
Torture		5	7	
Arbitrary arrest and detention		8-11	9, 10, 14	
PARTICIPATION				
Freedom to take part in government (parties, voting, elections)	21	25		7, 8
Express opinions (media)	19	19		
Associate in groups (trade unions, political parties, advocacy by NGOs)	20	22	8	
WELFARE				
Education	25, 26		13	10
Health Care	25 (1)		12	12
NON-DISCRIMINATION				
Gender rights	16, 17	3, 23 (3)		3, 13
Cultural rights	2, 18, 27	1, 18, 27, 2	15	
POLITICAL INSTITUTIONS				
Rule of Law	6, 10, 11	9, 10, 14, 16		2, 15
Legislature, Executive, Judiciary				
Military				

¹ UD refers to the Universal Declaration of Human Rights

² CPR refers to the Covenant on Civil and Political Rights

³ ESCR refers to the Covenant on Economic, Social and Cultural Rights

⁴ CEDAW refers to the Convention on the Elimination of All Forms of Discrimination Against Women

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The following report, on the condition of human rights and democratic development in Thailand, was written at the instigation of the International Centre for Human Rights and Democratic Development in Montréal. The study will serve as a springboard for the Centre's long-range activity in Thailand. A workshop held in Bangkok in November 1994 served to socialize the study among key players from civil society and the political process.

The authors have adopted the Centre's analytic division of human rights issues into four main dimensions: security of the person, welfare rights, non-discrimination, and rights of participation. We enthusiastically endorse the underlying view of the Centre that these dimensions are closely related, and that one cannot advance very far on any one of them if the others are neglected.

It does not follow that we have been able to give equal attention to all four areas. Following to some extent the limitations of our own knowledge or expertise, and to some degree also our sense of what issues are crucial, and what abuses cry out for rectification, we have in effect concentrated on two of the main dimensions.

The report consists of two extended essays, on non-discrimination (primary responsibility of Vitit Muntarbhorn), and on democratic development (primary responsibility of Charles Taylor), interspersed with shorter sections, dealing with welfare rights, and the security of the person. These four sections make up the main body of the report. This will be preceded by an Introduction, in which we discuss features of Thai history and outlook which provide the background to the discussions in the sections which follow. The document concludes with some suggested objectives for future action.

We would like to thank here all the persons whom we have interviewed in the preparation for this study. Their collaboration was essential to provide the substance for this analysis of Thai society and institutions. —

In order to consolidate democracy in Thailand, present-day democrats must confront a political history that has witnessed periods of semi-democratic government alternating with periods of outright authoritarianism. Since the installation of representative rule in 1932, the army has interrupted the constitutional order no less than 17 times. However, the resurgence of democratic constitutionalism indicates that the democratic aspirations of Thais are too powerful to be ignored. The growth of the middle class, the emergence of an independent print media, and the strength of non-governmental organizations in recent times have been essential elements of Thailand's move towards democracy.

The current debates in the Thai Parliament over constitutional reform and decentralization reflect serious efforts to grapple with the legacy of a hierarchical state. However, the results of efforts to modernize without democratizing are inhibiting current attempts at democratic development. Considerable power remains in the hands of an entrenched bureaucracy, which is used to functioning outside of civilian control. Attempts by Thai citizens to mobilize and influence political and economic developments in society have been weak and at best inconsistent. As a result, some traditional "undemocratic" practices, such as patron-client relationships, have survived and in some cases flourished. In this situation of semi-democracy, there is an urgent need to reinforce representative institutions and curtail ongoing violations of human rights in the areas of security of the person, popular participation, social welfare and non-discrimination.

While democracy in Thailand has been on an upsurge since 1992, its future cannot be guaranteed unless democratic structures are institutionalized and the democratic process can be made more relevant to the vast majority of Thais. The legacy of past authoritarian regimes can only be overcome by greater popular participation and community mobilization. Civil society, and non-governmental organizations in particular, must ensure that the state does not overstep the confines of its powers. An equilibrium must be found not only between state entities such as Parliament, the judiciary, the executive, and the military, but also between state and non-state actors, including the business sector, non-governmental organizations, and the community at large. The study which follows examines the current strengths and weaknesses of Thai democracy and identifies some elements of an agenda for widening and deepening the democratic experience.

1. The authors found that contemporary Thais interpret their relationship to power at two levels. At the first level, people accept being the subject of power because they cannot imagine the alternative. In this "amoral register", power need not attempt to lay any great claim to legitimacy. At a second level, power is conceived within a moral register where the state itself is seen as a moral community. This moral register has at times been used to legitimize bureaucratic rule. But these dharmic notions can also be used to de-legitimize power when it surpasses the limits of benevolence. It is this latter aspect of traditional legitimacy, accentuating the importance of good rule, which has great potential for evolution in a democratic direction.
2. Despite some progress towards democratization, social norms in Thailand remain feudal, paternalistic and authoritarian. In the political sphere, these social characteristics are reflected in the survival of hierarchical structures, the lack of gender democracy and excessive nationalism.
3. There have been very few avenues for redress of human rights violations in Thai society. Until the formation of the Parliamentary Committee on Justice and Human Rights in 1992, there was no specific state entity vested with the power to deal directly with a broad range of human rights

issues. The low quality of many law enforcement institutions and personnel, the prevalence of official corruption and traditional difficulties in accessing the official judicial system have increased the level of cynicism about democracy and state institutions.

4. The official response to human rights concerns has tended to consider these concerns as "needs" which depend upon the state's discretion rather than rights which should be advocated against the state and other power groups.
5. In a context where the security forces operate in many instances beyond Parliamentary control and that ordinary judicial recourse is usually fruitless or unavailable to most citizens, there is an urgent need to reform aspects of the legal-institutional framework to enhance the level of official transparency and accountability. The US State Department has reported that the police have been responsible for the summary execution and torture of criminal suspects. Of particular importance for the long term, the failure to account for the repression of May 1992 raises the question: how secure are Thais against a repetition of this kind of violence?
6. Thailand's record of adhesion to international human rights treaties indicates a certain ambivalence on the part of the state to the concepts of the universality and indivisibility of human rights. The Thai perception is markedly different from the international interpretation of human rights which advocates the rights of all persons without discrimination.
7. Discrimination is still apparent in laws and social policies relating to the roles and position of women. Women continue to be the victims of the hierarchical and paternalistic legal and social structures. Much work is needed to broaden the notion of democracy and human rights to benefit women and the girl child at all levels.
8. Paternalism, authoritarianism and excessive nationalism have also contributed to discriminatory practices against children. Discrimination, in this respect, is connected to the pervasive belief in Thai society that children should be grateful to the parents and show filial duty by undertaking merit-making tasks for their parents. At particular risk are the girl child, child labourers, children in prostitution and children of non-Thais on Thai soil.
9. As a result of the numerous conflicts in the region, Thailand has received an influx of refugees from Vietnam, Laos, Cambodia and more recently Burma. Thai immigration law has tended to classify persons seeking refuge as "illegal immigrants" without rights on Thai soil. This approach is at odds with the universality of human rights and tends to reinforce patterns of discrimination.
10. Thai Officials fear that advocacy of the rights of minorities or indigenous peoples will lead to the call for self-determination resulting in secession. The official policy towards all minorities is assimilation in the quest for an "integrative state". The Muslim community, in particular, has suffered from the results of excessive centralization. In the case of indigenous peoples, the official attitude has been to either avoid the issue or to classify the Thai people as indigenous to Thailand. These attempts to avoid recognizing regional differences, with the growth of education and consciousness, could eventually provoke antagonistic regional movements.
11. The Thai political system has performed well for specific interest groups and individuals, but it has not yielded policies which are effective in addressing the collective needs of a rapidly

industrializing society. At the same time as the pull of industrialization has fragmented traditional social systems, these have not been replaced by any general welfare provisions for marginalized groups. The state must recognize that it has a role to play in enabling rural people and dispossessed groups to access the resources they need to improve their livelihood, welfare and security.

12. One important part of the solution involves reforms of Thailand's institutional and legislative framework. There is an urgent need to reform the "undemocratic" laws which remain as part of the legacy of authoritarianism. Institutional reforms must also strengthen the legislature and party systems to permit democratic control over public policy, the bureaucracy and the military.
13. Thai democracy is in a phase of upsurge as a result of the slow growth of an elite "civil society". Maintaining this momentum requires two things: widening and deepening democratic participation; and strengthening the elite democracy which already exists.
14. The appeal of democracy is the result of three phenomena: first, democracy offers an alternative to the traditional clique-ridden, corruption-prone ways of the past; second, it has very high prestige internationally today; and lastly, democracy brings along with it new understandings of dignity.
15. However, democratization must overcome the resistance of the Thai bureaucracy which seems to be a model of non-transparency and multiple, overlapping tracks of implementation. Although responsible for many early successes, the traditionally hierarchical bureaucracy is having difficulty adapting to tasks which require a management more sensitive to feedback.
16. It must also be recognized, however, that those pushing for democracy have often lacked broad support in the society as a whole. The limitations of citizen mobilizations in urban centres, best exemplified by the weakness of the Thai trade union movement, means that urban civil society remains an elite phenomenon: more representative of the middle class than a popular aspiration; concentrated in the cities rather than the countryside; and above all, heavily centred in Bangkok. Notwithstanding this factor, there have been significant examples of urban dwellers organizing themselves into small self-help groups. However, these small organizations need to be linked laterally and develop their institutional capacity to offer their members a sense of solidarity and security.
17. One can also identify two competing political dynamics at work in Thailand. The growth of an elite-urban civil society has given more weight to a politics focused on issues. In contrast, the political dynamics in the regions are more in tune with traditional patron-client structures. While it is certainly true that these dynamics overlap in some areas, in practice they tend to work against each other. While issue-driven politics is more about defining a framework for resolving key issues, rural-popular electoral politics focuses on trying to ensure that the system provides the most resources to a specific locality.
18. From a democratic point of view, this rural-popular model is deeply unsatisfactory. In the Thai context, the rural dynamic of local-benefit politics keeps issues from arising, a number of which have already determined to the detriment of peasants. Top down structures mean that peasants are not heard on a host of questions to do with development, natural resource utilization and conservation. Protest movements have arisen, but these are directed at resistance to particular

projects, rather than into support for an alternative over-all policy. The large percentage of the population living in rural regions means that democratic development must find a way to accommodate the Thai countryside which is operating by the "rural-popular" dynamic.

19. Radical decentralization must be an integral part of the democratic agenda as a means to bring local concerns and policy issues together. Effective local government can also begin the process of empowering people and altering traditional rural-popular attitudes towards power. The experience and confidence gained at the local level will also enhance their ability to influence power at higher levels. However, local elections are not enough. Local bodies must also be given real authority and the necessary taxation and borrowing powers to implement local initiatives.
20. The decentralization of representative institutions and empowerment of local government must also be accompanied by a greater emphasis on consultative processes and negotiated solutions to the conflicts which have arisen out of the development process. This should begin with an extension of the principle of local stewardship over common resources. In the case of megaprojects, such as hydroelectric dams, mechanisms must be developed to give communities a statutory right to information about these projects and the opportunity to express their views.
21. This mode of negotiation-consultation could build on the traditional Thai model of legitimacy which emphasizes the state as a moral community. In contrast to the adversarial politics developed in the West, perhaps the evolution of Thai politics can lead to a greater emphasis on political consensus.
22. While external influences have a role to play in strengthening civil society, it is clear that the key developments in democratization must be indigenous. For democracy to take root in Thai society, it must be understood by the majority of people as a channel of popular power and collective decision-making. This should be linked to the notion of a moral state. A democratic social understanding must see the society as a potential locus for righteousness. Reform-minded members of the Sangha can be one of the sources from which this justification of democracy and human rights emerges, building on the notion of individual responsibility and new interpretations of the doctrine of non-violence contained in Buddhism.
23. Building on the Thai experience, democrats in Thailand and their international supporters should begin to focus on the preventative dimension of democracy and human rights. This approach emphasizes education and actions to satisfy people's material needs and alleviate inequalities in society. This should be accompanied by community pressure to hasten the reform of "undemocratic" laws. Some elements of a comprehensive Agenda for Democracy and Human Rights have been proposed by the authors in the study's chapter on Orientations.
24. The authors conclude with a suggestion of three fields of work for international organizations interested in reinforcing Thai democracy:
 - Reinforcing the local capacity for policy development.
 - Strengthening the capacity of the various self-help organizations and advocacy groups.
 - Supporting the development of methods and mechanisms for conflict resolution.

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Introduction

1.1 MODERNITY WITHOUT DEMOCRACY

The political condition of Thailand in the 20th Century has been largely determined by the fact that its 19th Century rulers tried to "modernize" without democratizing. Faced with the threat of the Western colonial powers, encroaching from both East and West, Chulalongkorn (1868-1910) reformed the Siamese state. He tried to build an effective modern administration on "Weberian" rational lines, with separation of function from person, functional ministries, a regular chain of command, and rule-governed procedures to insure efficacy and consistency.

This is part of the modern state form, which is very different from earlier types of polities, both European and Siamese. The characteristic of the modern state is not only that it attempts to control and administer the life of society in unprecedented ways, but that this administration is meant in principle to impact equally on all citizens, regardless of their social niche or geographical location. By contrast, pre-modern states related differently to, say, nobles and commoners, clergy and laity, townspeople and peasants; and in particular, their control got progressively more tenuous over outlying regions. This was the case with European feudal states, and it was also true of the Siamese state, where peripheral control shaded off into an uncertain paramountcy over hereditary rulers of outlying territories (Lan Na, Luang Prabang).

Another facet of this distinction, which is important in understanding modern Thailand, is that the modern state has impact because it relates to all its citizens directly: each pay taxes directly to the same fisc, are subject as citizens to the same laws; above all, each belongs as citizen individually, that is, their membership in the state is not conditional on their relation to anyone else. As against this, in the premodern state belonging is often indirect: peasants are under the paramount king because their lord is. Membership is frequently mediated, as against the "direct-access" mode of belonging of the modern state.

Of course, the change is not simply a matter of legal forms. Whatever the constitutional theory, a state will not function in a direct-access manner unless people's understanding changes. unless, we might say, they "imagine" their society in the new way. Now to some extent this can come about

through the way that the modern state treats its subjects. Young men conscripted into the army, or schoolchildren inducted into a national system of state-run education, will live an experience of direct access, of being dealt with directly and uniformly as citizens, as well as being surrounded by the discourse and symbols of the modern direct-access state.

But in order to build democracy, you need more than these officially organized experiences of direct access. There have also to be ways in which citizens are mobilized outside the state, mobilized as citizens in the strong sense, that is, in attempts to affect or determine political or other outcomes in their society - be it in trade unions, social movements, or political parties. That is why at the heart of the democratic tradition in the West has been the idea that direct access comes primarily through citizens joining together as equal members of a "people" or "nation", and building a polity in their image. "Official" experiences of direct access are meant to reflect this more fundamental mode, as enshrined in the stories of the American and French Revolutions, for instance.

The attempt by Chulalongkorn and his successors to build a modern state reversed this order. They realized that they had to create the consciousness of a direct access society, and that was the force given to the word "nation" (*chat*) which was introduced as one of the poles of allegiance for contemporary Thai. But at the beginning this was associated in a trinity with two other rallying points: king and religion, in the definition of Thai national identity. The nation was not seen as one of self-governing citizens, but rather sharing loyalty to common reference points of authority.

Since the constitutionalist coup of 1932, Thailand has been moving unsteadily in another direction, but the original mould still remains strong enough in many respects to have made the moves towards democracy uncertain and intermittent, in what has been called a "bureaucratic polity".

The legacy of Thailand's first response to modernity emerges in three ways:

- A) The strength of the bureaucracy. In this we are including both the army and the civil administration. For much of the 20th Century these have functioned for times entirely, but always largely untrammelled, by a civil constitutional structure. They have operated, moreover, in a society which is highly centralized, even beyond the norms of the French Third Republic, in which the Ministry of the Interior exercises tentacular control over local government.
- B) The relative paucity and weakness of citizen mobilization.¹ This is made worse by the fact that some of the extra-state mobilization has been of an authoritarian type. One of the sinister inventions of the 20th Century has been citizen mobilizations, imitating earlier democratic ones, but whose purpose was rallying support for undemocratic regimes. The paradigms are the fascist movements of the 1930s. There was a period during the war, when the strong man Phibun seemed to be toying with some similar form, as a model for the Thai state. And similar modes of mobilization recurred in the 1970s, with movements like the Village Scouts. But our main point here is not to dwell on these dangerous growths, but on the weakness of self-organizing movements in general, particularly in the countryside. A Farmers Federation of Thailand (FFT) did get going in the North in the 1970s, but it collapsed, partly under the impact of repression (the assassination of many of its leaders by unknown agents, obviously in cahoots with the police).
- C) Partly as a result of A) and B), the bureaucratic state itself tends to function in ways which reflect an earlier political culture. Patron-client relations play a big role. That is, people lower down attach themselves to a strong man at the apex, and give him support in return for his protection and favour. The army-bureaucracy system tends to be clique-ridden, and the interplay and rivalry

¹ Some scholars (like Ben Anderson) have argued that this is a price Thailand has paid for the otherwise fortunate fate of never having been colonized. In those countries where the modernizing state was alien, the national movement necessarily had to mobilize society at the base. But well before Thai democrats start regretting not having been ruled from Paris or London they will doubtless notice that some of these mobilizations have been less than happy democratically speaking, e.g., in the neighbouring countries of Southeast Asia.

of these webs of loyalty cut across and sometimes neutralize the "Weberian" rational chains of command. What is worse, in the post-War period, the growing private business sector has been partly integrated into the system of cliques. For instance, generals were appointed to boards and shared in profits, in return for various modes of government support, contracts, etc., to the firms concerned. The imperfections of the political system begin to take their revenge on the modern state structure itself.

Even more fatefully, from the point of view of this study, the relations of people at the base of Thai society to power—both state and private business—tends to be shaped by the same patron-client mould. This severely inhibits democratic development. We return to this below.

In this situation, a representative democratic constitutional system has had trouble getting established. First introduced in 1932, democratic constitutions have been frequently put in place, but then overturned by coups. Their frequently uncontested demise shows the weakness of notions of democratic legitimacy in the society as a whole—at least until recently—when new signs of hope are dawning in the post May 1992 period. But their continual resurgence shows that democratic constitutionalism has something going for it which makes it impossible for a clique-ridden and semi-corrupt bureaucratic polity to continue unchallenged in peace.

1.2 MODELS OF LEGITIMACY

Below, in Section III of the main Report, we will try to identify the forces pushing in each direction. But in a preliminary way, and as a background to our study, we want to say a word about the understandings of legitimacy which are abroad in Thai society today.

First, the "internal" ones, those that come from Thai tradition. One very powerful understanding which comes from way back is a paternalist one. A powerful figure on top protects and helps those underneath, and in turn calls on their labour and resources. It has been argued that this goes way back in Thai history, even before their settlement in what is present-day Thailand.² But this understanding was accentuated by the two great models of high culture which shaped the growing Thai state. One was the model of the Hindu cosmic kingdom, in which the ruler has to bring the mundane world through ritual into true with the cosmos. Rituals descended from this tradition are still performed by Thai kings. The second was the Buddhist notion of the king as charged with establishing dharma in the world.³

All of these traditional images come together in a paternalist model, in which power is concentrated at the top. But there is also an underlying notion of reciprocity. The strong man rules, but the rule is meant to confer benefit. Authority does not come from the base, but there is some notion of permissible limit.

How living are the images drawn from this history today? It is obviously difficult to answer this kind of question with precision. But it would seem that this "hierarchical-reciprocal" model still makes sense to contemporary Thais, but in two different registers.

The first is the "amoral" register, one in which people understand "the way things are", the way things usually function, whether we like it or not. One could argue that many Thai still adjust well and function within the patron-client mode, because they see this as the way things are. There is nothing necessarily demeaning to be a client. Instead, there is a segmentation, noted by some anthropologists,⁴ between the domain of close, human, identity-forming relations based on sharing,

² See David K. Wyatt, *Thailand*, Yale University Press, 1984, chapter 1.

³ See S. J. Tambiah, *World Conqueror and World Renouncer*, Cambridge U.P. 1976.

⁴ See Niels Mulder, *Everyday Life in Thailand*, Bangkok: Editions Quang Kamol 1985.

and an "external" domain in which one has to cope with amoral power. This is reflected in Thai religion in the distinction between the domain of the Buddha, and the Thewada (gods), on one hand, where humans can appeal to benevolence, and on the other, the relation to the spirits (phii), which are more frankly contractual, or sometimes even hostile.⁵

To the extent that the power relation is seen in this "amoral" register, then it can be adjusted to as something normal. But the limitation here is that it is not legitimated or sacralized. And it is understood that a client can disengage from a patron who is not "delivering". Of course, there are strict limitations on this in practice: one cannot "withdraw" from the control of the bureaucratic state; and often not from the domination of an usurious money-lender either. But in the "amoral" register, power can lay no great claim to legitimacy.

But there is also another register, one in which power is conceived as within the domain of morality and benevolence. This latter is not confined simply to the family, or perhaps the village, with everything else outside as the realm of amoral power. Rather the state itself is seen as a moral community, as it is in images of Buddhist kingship, the cakkavatti and the dhammaraja.⁶

Here too, the model pulls in two directions. On one hand, this moralized view can be used to recruit popular support for a hierarchical regime. This is what Marshal Sarit did for instance in the period after 1957, when he began to encourage a more important role again for the king. Bureaucratic power was meant to be underpinned by notions of benevolent rule from on top. But these dharmic notions can also be used to de-legitimate power which has gone beyond the limits of benevolence.

The key events of the 1970s illustrate both these directions of thrust.⁷ In 1973, at the time of the student demonstrations in October, a sense of illegitimacy hung over the then junta, partly because of their initially violent response. It was possible for the king, as the representative of supreme legitimacy, to "invite" them to leave the country, and hence consecrate the turn-over. A somewhat similar role was played by the king again in May 1992, after the violent reaction to demonstrations of the Suchinda government.

But the other side came later in the 1970s. The slogan "Nation, King, Religion" was used as a rallying cry by radical right wing groups, who attacked democratic and radical leaders. The movement of reaction culminated in the October 1976 coup which relegated the democratic constitution once again to the basket. In other words, the sense that the polity is a moral community was used to stigmatize and ultimately repress critics, as disloyal outsiders.

It is clear that Thai traditional understandings of power and order can be brought to bear in three rather different ways: one is immoral, as a picture of the "way things are"; the second two are moral, but while one limits power, the other can be unleashed to repress dissidents.⁸

5 See S.J. Tambiah, *Buddhism and the Spirit Cults in Northeast Thailand*, Cambridge UP 1970.

6 The cakkavatti (cakravartī), or "turner of the wheel" of Dharma, is one of the descriptions of the ruler in the tradition centered on Asoka: a king who thus realized the dharma in practice would be a dhammaraja (dhammarajā).

7 This is discussed in John Gilling, *Thailand: Society and Politics*, Cornell University Press 1981, pp. 154-7. Frank Reynolds in his "Legitimation and Rebellion: Thailand's Civic Religion and the Student Uprising of October, 1973", in Bardwell L. Smith, ed., *Buddhism and Legitimation of Power in Thailand, Laos, and Burma*, Chambersburg, PA: Anima Books, 1978, discusses the use by the student demonstrators of the symbols of "Nation, Religion, Monarchy".

8 The existence of these three "registers" helps explain what may seem paradoxical. How can we reconcile the fact that powerful people in Thai society often resort to violence, and get away with it, with the supposed force of these traditional images of legitimacy? Surely the first shows the second to be inoperative?

But cultures are more complex than this. In the "amoral" register, violence by the powerful can seem irresistible, part of "the way things are". But in the moral register it is delegitimizing. The fact that it takes certain constellations of leadership and mobilization for the second register to become relevant doesn't take away from the force of this model of legitimation when it does become so. The reaction to May 1992 shows its continuing strength in Thai society. We return to this issue below in Section IV of the main Report.

From a democratic perspective, which of these is desirable? Or should one rather hope in the name of democracy that the whole complex of images fade from Thai minds? We believe this latter prospect to be outside the realm of possibility; more, we question whether this is desirable. Uprooting such deep images of moral order from a people is not offering them a human fate. What we ought to hope for is that indigenous images can evolve in a way which will provide a holding environment for democracy and human rights.

From this standpoint, it seems that the third kind of impact is the desirable one. The "amoral" perspective, if it became dominant, can only breed a mass of detached citizens, who look on power as a neutral field of contest. This cannot be the basis for democratic life. The repressive mode of the moral register is obviously antithetical to democracy. But the aspect of traditional legitimacy which accentuates the importance of good rule has great potential for evolution in a democratic direction. One important part of it seems to be a condemnation of needless violence. This clearly is part of what undercut the junta in 1973, and again Suchinda in 1992. But this is also a central part of the democratic mode of thought (at least in its "constitutional", non-Jacobin forms). Democracy is also a regime of peaceful transitions. Indeed, in many societies, because of the erosion of hierarchical notions of legitimacy, democracy remains as the only peaceful way of attributing power, and that is not least among its attractions for people.² One can argue that this is becoming true for Thailand as well. Indeed, in conceiving democracy as above all a regime of peaceful transitions, we connect up with the understanding of *ahimsa* developed by an influential strand of contemporary Buddhism. We will return to this at the end of Section IV.

In passing, we should mention another feature of this positive application of the traditional Thai-Buddhist notions of legitimacy. It gives a potentially important role to individuals of proven "merit", who are invested with a lot of moral authority which can become politically relevant and potent. We can understand in these terms the appointment by the king as prime minister, in the wake of the 1973 fall of the Junta, of Sanya Thammasak, the then rector of Thammasat University. There is a possible democratic leverage to moral authority which ought not to be neglected.

In Section IV, in the discussion of the public sphere, we will return to these images of legitimacy, and the ways in which they might evolve in a direction hospitable to democracy.

1.3 IMAGES OF HIERARCHY

But besides these notions of political legitimacy, there are also deeply-ingrained images of hierarchy, and age-old understandings of community in Thailand which can have an important impact on human rights and democratic development.

One of the most intriguing conundrums in Thai society is the plethora of words or terms used for the nominative "I". There is no single way of uttering or writing "I", but a multiplicity of ways of expressing "I", depending upon the relationship between the speaker or writer and the counterpart, and the milieu to which he or she belongs. Indeed, upon scrutiny, there seems to be at least twenty five ways of saying or writing "I". These range from very polite words such as "Krapom", "Dichan" and "Paprachao" to less polite terms such as "Koo", "Ka", and "Oua". These nuances are very telling about not only the challenge of Thai etymology and philology but also the extremely hierarchical society which is still prevalent today. This is despite the fact that now over 90% of Thais have access to schooling and the country enjoys a very high rate of economic growth (some 8% GDP growth per annum).

² Ironically, this is the opposite of the late 18th Century view which saw democracy as threatening disorder and violence: it is not so much that our ancestors were wrong. We have also changed.

The so-called educated person from a certain milieu is supposed to know exactly and innately which "I" to voice in which context. If a mistake is made, either through using too polite an "I", or too crude an "I", in social terms one is automatically relegated to a less refined position in the eyes of the beholder, and is culturally "reclassified".

This initial example indicates the societal context in which one has to address issues of democracy and human rights in Thailand. Basically, Thai society is still very hierarchical and stratified, and political decision-making and concomitant institutions are very "top-down" by nature. Although in 1932 absolute monarchy was abolished and a Constitution was introduced for the first time, there was no quantum jump from absolutism to participatory government. The muted democratic winds of change did not alter many of the social norms which were and still are feudal, paternalistic and authoritarian.

Where and when the concentration of power and wealth has shifted from that time onwards, it has oscillated between strands of elitism - mainly urban and centralized, at times with their cohorts in localities, rather than among the mass base of the population who were and still are in rural areas.

The key players in the political arena from that fateful year of 1932 have, more often than not, not been civilians but those in uniform. The military and bureaucrats have played a pivotal role in circumscribing or extending their enormous power base in the country. This has been witnessed by no less than 22 coups and failed coups staged by members of the military since 1932. The most recent coup was in 1991 when the democratically elected Government of Chatichai Choonhavan was overthrown by the self-appointed National Peace-keeping Council, alias military junta. However, in 1992, democratic forces emerged to drive the military and their allies from power, at least temporarily.

If authoritarianism, coupled with elitism, has plagued the search for a meaning to democracy and human rights in the unfolding of Thai history, there are various additional "isms" which have impeded greater realization of both democracy and human rights in the country. Paternalism is a key "ism" which has for long shaped the relationship between man and woman, and between adult and child. There is a Thai saying that "Men are the forelegs of the elephant; Women are the hind legs of the elephant".¹⁰ The implication is that for centuries past and present, women's status has been lower than that of the male counterparts; women are supposed to follow the commands of men. Although today, the image of the domesticated housewife quietly obeying the orders of the husband is changing markedly, there are many remnants of paternalism which impede the call for equality and non-discrimination between the genders; the constraints are both "de jure" and "de facto" and will be scrutinized in the later part of this study. Suffice it to note here, that equally at stake in this society is the challenge of redefining democracy not only to embody "electoralism" inherent in elections and access to state governmental institutions but also gender democracy.

Likewise, the relationship between adult and child. As elsewhere, this is still very much based upon the old adage that "children should be seen and not heard". Concomitantly, many parents regard their children as their property rather than as subjects vested their own rights irrespective of parental rights. The paternalism pervasive in such cultural perceptions has added new twists to the tale, as the family nexus is disintegrating and more children are being pushed out of the home for socio-economic reasons. "Children for sale" has become a common phenomenon in several parts of the country where the reach of consumerism, coupled with family break-up and breakdown, results in debasement of family values and the treatment of children as objects of profit rather than as subjects of independent rights.¹¹ The rampancy of child labour and child prostitution is thus notorious.

10 V. Muntarom. *Women's Development in Thailand* Bangkok: Thailand National Commission on Women's Affairs. 1995. p 11

11 The situation of children for sale in Thailand has been covered extensively by United Nations reports. For recent appraisal see: V. Muntarom. *Sale of Children* UN Doc E/CN.4/1994/84 (January 1994)

Another "ism" at stake in the quest for democracy and human rights is that long drawn physiognomy of excessive "nationalism". Particularly in the period between 1932 and the 1970s, that catchphrase was a rallying call used by many military cliques and bureaucrats to consolidate their power over the people. It has had three particularly insidious impacts. First, it has given rise to a variety of laws and policies against dissidents, particularly those branded as Communists. Concomitantly, this has strengthened the "national security" argument used by various authoritarian elements to curb democratic lobbies opposed to their rule, even though that national security argument is played up for fictitious and propaganda purposes.

Second, undue nationalism has inculcated upon many quarters of Thai society the notion that human rights concern only the rights of Thais, as contradistinguished from the rights of aliens (such as refugees) and those unable to prove Thai nationality even though born in Thailand (such as various hilltribe communities). There lies the danger that this nationalism will result in the spread of another myopic "ism", namely "parochialism". As will be seen later in the study, the parochial approach often pervades key decision-making on democracy and human rights issues. Intrinsically, such parochialism looks at democracy and human rights through national, indeed Thai, standards rather than through the globalization of democracy and universality of human rights.

Third, there has for long been mistrust of minorities and a reluctance, particularly among the Thai bureaucracy, to acknowledge whether there are indigenous peoples in Thailand, apart from those classified as Thais. This is in part due to the national quest for an integrative state rather than one based upon pluralism of different cultures in Thai society. Therefore, there have been sporadic clashes between state authorities and minorities, particularly Muslims who populate the Southern part of Thailand which borders upon Malaysia, in regard to various socio-cultural traditions and political aspirations. On another front, while some external sources have been willing to classify the hilltribes who inhabit the northern part of Thailand as indigenous, Thai officials do not uphold this view.

This scenario appropriately begs the question: how have the words "democracy" and "human rights" been perceived or defined by both commentators and the governmental and other circles in Thailand?

As indicated earlier, the word "democracy" — "Prachathipathai" in Thai — has been used by many to imply "electoralism", namely elections and access to statal institutions, primarily Parliament. In the courses given to primary and secondary school students, there is much emphasis upon the functions of Parliament, the Constitution and people's participation in national elections.

The current debate on democracy has been broadened to interlink with decentralization, particularly at the provincial and local levels. There are two litmus tests. First, to what extent can local leaders and institutions be empowered to decide upon expenditure of local resources and the choice of local projects, rather than having to wait for the green light from the central authorities? Second, to what extent can provincial governors be directly elected by the people in the provinces? Both are highly politicized issues, and granted the nature of the current administration which is based upon a coalition of political parties with divergent views on decentralization, decision-making on these two questions is still in a limbo status.

Parallel to this, it may be noted that the Thai Government participated at the 1993 World Conference on Human Rights and adopted the Vienna Declaration and Programme of Action resulting from that conference, with the following definition of democracy:

"Democracy is based upon the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives."¹²

¹² UN World Conference on Human Rights, New York, UN, 1993, pp. 30-31.

En passant, it may be observed that in the lead-up to the World Conference, Thai non-governmental organizations and their counterparts from the Asia-Pacific region adopted the Bangkok Non-Governmental Declaration on Human Rights (1993), with the following stipulation on democracy:

Democracy is more than a legalistic or formal process. Democracy is more than the ritual casting of a ballot at one party or multi-party elections. True democracy involves participatory democracy by the people at all levels so that the people have a voice in the discussions by which they are governed.

It must be realized in the forms of people's empowerment and participation at the grassroots and other levels with responsive and accountable processes and institutions at both the local and national levels. It demands good governance, freedom from corruption, and accountability of state and other authorities to the people. It involves the protection and participation of those groups which are not in the majority, namely minorities and dis-empowered groups. It is intertwined with the issue of land and social justice for rural people and other disadvantaged groups.

Democracy is a way of life; it pervades all aspects of human life - in the home, in the workplace, in the local community, and beyond. It must be fostered and guaranteed in all countries.¹³

This wider definition of democracy offered by the non-governmental sector encompasses, by implication, issues of gender democracy, the child's right to participation, and decentralization at the local and provincial levels.

Turning now to the term "human rights", the Thai equivalent reads "Sithi-manusyachon"; this is roughly translated as the rights of human beings.¹⁴ The term itself is a recent innovation and made its mark evidently when Thailand became a member of the United Nations in the 1940s; the United Nations Charter specifically referred to the need to foster human rights. In earlier times in Thailand, there had been usage of the word "rights" rather than "human rights". During the period of absolute monarchy which preceded 1932, the word "rights" made an appearance in various laws concerning ownership, for example a woman's right to matrimonial property and a slave woman's right to her child. The word was employed in regard to ownership in an inter-personal relationship rather than as advocacy of an entitlement against the State.

A key reference point for the term "human rights" at the national level is obviously the Thai Constitution. Yet, this is a delusion; upon scrutiny, the expectation that "human rights" would be incorporated into this instrument has never been fulfilled. It is the word "rights" rather than "human rights" which has crept into the national Constitution. There is a fundamental distinction. While internationally "human rights" covers civil, political, economic, social and cultural rights irrespective of race and other origins, the word "rights" in the Thai Constitution implies the rights of Thai nationals. This is exemplified by all the fifteen Constitutions promulgated between 1932 and 1994. In the first Constitution of 1932, there was a section which dealt with "The Rights and Duties of the Siamese People". In the current Constitution adopted in 1991, there is a similar section on "The Rights and Duties of the Thai People".¹⁵

The reference to the rights of the Thai people reveals a rather parochial affair which is different from the international perception of human rights which advocates the rights of all persons without discrimination.

¹³ *See* Welles, Bangkok: Asian Cultural Forum on Development, 1993, p.202.

¹⁴ See further: W. Jarnnarnwej and V. Muntaronorn (eds.), *To Human Rights! Rights or Duties in Contemporary Thailand?* Bangkok: Chulalongkorn University, 1992 (in Thai).

¹⁵ *Constitution of the Kingdom of Thailand 1991*, Bangkok: Office of the Judicial Council, 1992 (English Translation). To date there have been 15 Constitutions, including interim Constitutions, as follows: 1932, 1932, 1946, 1947, 1949, 1952, 1959, 1968, 1972, 1974, 1976, 1977, 1978, 1991, 1991.

This does not mean that human rights are unprotected by law in Thailand. There are various laws and policies which offer protection to all persons on Thai territory, irrespective of nationality. These include the Civil and Commercial Code, the Code on Civil Procedure, the Criminal Code, and the Code on Criminal Procedure. Ironically, these Codes have provided more enduring guarantees of human rights than the Constitution has been able to. While Thai Constitutions come and go, and are usually rewritten because of coups, the Codes have remained a bastion untoppled by coups, even though amended many times since the turn of this century.

Any talk of "human rights" in Thai society is also likely to be unbalanced unless one bears in mind the frequent reference to "duties" in Thailand. If one scrutinizes the content of the information given to students in school, there is much reference to the duty to pay tax, the duty to inform the authorities of births and deaths, the duty of conscription etc.¹⁶ There is, by contrast, a paucity of information given on how to protect one's rights and where to get help if one's rights are violated. This example indicates that the mentality inculcated upon students from a young age is one of obedience and acquiescence to the State, the family and the community rather than the ability to critically analyze and impugn the action of the State and other power groups which may violate human rights.

That prevalence of duties over rights is also enshrined in the current Constitution. After the section on "rights", there follows a section on "duties" of citizens which recognizes the broad powers of the State to limit the exercise of rights. There is also an umbrella provision which imposes an overall constraint on the exercise of rights. By section 49 of the current Constitution, the rights stipulated cannot be exercised where they are detrimental to the State, the Religion (Buddhism), the Monarchy or the Constitution.

In sum, the quest for an embodiment of human rights in the supreme law of the land —the Constitution— is illusory precisely because the Thai Constitution is not a social contract between the State and its people. It is not genuinely based upon the universality of human rights as espoused by international human rights instruments. It is more of an *instrument d'état*, representing the political undercurrents at play, and inevitably shaped by its coup-prone progenitors. It has more to do with the functions of government, e.g. the relationship between Parliament, the executive and the judiciary, in the context of the unspoken factor —the military and bureaucracy— and less to do with rights and liberties conducive to accountability and responsibility of the State and other power groups in society. One must, therefore, look beyond the Constitution for the concretization of human rights.

The horizon beyond has witnessed, in particular, the emergence of non-governmental organizations during the past three decades, and a vocal press which perceive human rights along the lines of universal standards rather than parochialism. These tenets were particularly visible in 1993 when this sector came together to adopt the Bangkok Non-Governmental Declaration of Human Rights as an alternative to governmental views. That declaration provided a more universalistic approach to human rights as follows:

Universal human rights standards are rooted in many cultures. We affirm the basis of universality of human rights which accord protection to all of humanity, including special groups such as women, children, minorities and indigenous peoples, workers, refugees and displaced persons, the disabled and the elderly. While advocating cultural pluralism, those cultural practices which derogate from universally accepted human rights, including women's rights, must not be tolerated.

As human rights are of universal concern and are universal in value, the advocacy of human rights cannot be considered to be an encroachment upon national sovereignty.¹⁷

¹⁶ V. Muntarabhorn, "Education on Rights and Duties in Thailand", in *To Human Rights! Rights or Duties in Contemporary Thailand?* op. cit., pp. 224-231.

¹⁷ *Our Voice*, op. cit., p. 133.

1.4 THE INTERNATIONAL IMPACT

Alongside the traditional Thai understandings of governance and hierarchy, there are also exogenous images of legitimacy which come from the surrounding world. Already in the 19th Century, the notion of "modernity", as a society which was efficient, economically developed, capable of organizing militarily and bureaucratically, exercised a powerful attraction on Thai elites, not least on the king. This image was connected to the idea of a "civilized" law, meeting international standards of order and fairness - although this ideal was partly externally imposed by the need to free Thailand from the imposition of extra-territorial rights for subjects of the colonial power, which impositions were justified by the supposedly uncertain state of the Thai administration of justice.

No country is without a powerful influence of the going "international" standards, particularly on its elites. The standards of countries that seem successful in terms of economics and military power have that much greater authority. In general, international standards have come in three flavours in our century. There was a period in which many thought that the wave of the future was with authoritarian regimes. This reached its height in the 1930s, and was not without some effect on Thai politics, particular under Phibun. Then there was a strong pull of Leninist regimes. This affected some groups in Thai society, but it mainly offered a pretext or motivation for a continuation of authoritarian politics in the name of combatting the communist menace.

We have now reached a stage (which will not necessarily last forever, whatever is said about "the end of history") where democratic constitutional regimes seem the most powerful, prosperous and stable. Modernity in both its facets will obviously go on attracting many Thai. The original facet of efficiency, power, economic growth, translating itself into technocratic values, is more powerful than ever. But the facet stressing the need for constitutional order is also growing in strength. It draws people both through the fear of the costs of being left out of a world consensus, and also by being internalized as a standard one wants to live up to.

So in addition to the continued force of traditional images, for some people legitimacy is tied to efficacy and growth; for others (sometimes the same people) it is tied to democratic constitutionalism. The important questions concern the impact of these diverse models in practice. We will try to trace some of this in the following pages. —

The Dimensions of Democratic Development

The International Centre for Human Rights and Democratic Development in Montréal has distinguished four dimensions along which the state of rights and the condition of democracy can be assessed. These focus on the security of the person, welfare rights, the absence of discrimination, and the power to participate in society and its governance at all levels (see Democratic Society Indicators, page v). These are not separate baskets. The point of calling them "dimensions" is to underline how interdependent they are. The formal right to political participation can be meaningless without adequate security of the person; it can be very restricted in its scope if discrimination is rife in society; it can appear close to meaningless where basic welfare needs are not met. Taking things from a different angle, we can see that the political right to participate can empower people to transform their social and economic plight, and give them the means to overcome modes of discrimination of which they are victims. And many more such linkages can be traced.

For purposes of assessing Thai society, we discuss the dimensions separately. But the linkages must not be lost sight of, and we will continually refer to them in the course of this study, whose plan will be as follows:

First a brief introductory sub-section, in which we discuss the various human rights conventions, Thailand's relation to them, and the (rather incomplete) armoury of instruments Thai society has available to put them into practice. This is followed by a systematic treatment of the four dimensions. An empirical treatment of welfare and development is followed by an extended essay on non-discrimination, a brief discussion on the security of the person, and a longer essay on democratic development, in which the issue of participation rights will be taken up in the broadest perspective (Part III), and many of the linkages between the different dimensions will be underscored.

A key yardstick for testing how and if a country accepts the universality of human rights can be found in the international human rights instruments which it has agreed to sign. Thailand's record, however, leaves much to be desired in this respect; it is based upon a policy of detachment rather than adherence.

In 1948 Thailand voted for the Universal Declaration of Human Rights. However, since then it has been slow in acceding to other instruments, especially international human rights treaties or

conventions. The country is not a party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights or the (Optional) Protocol to the International Covenant on Civil and Political Rights. Together with the Universal Declaration these covenants, established in 1966, constitute the International Bill of Human Rights, the principal reference point in the human rights lexicon.¹ Thailand is only now seriously contemplating accession to the International Covenant on Civil and Political Rights.

Since the adoption of the 1966 instruments, the number of human rights instruments have proliferated, together with a variety of global monitoring and reporting mechanisms to review State performance. In recent years, an array of human rights treaties have aimed at the protection of special groups, providing an air of "specificity" to human rights concerns. These include the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of Migrant Workers and their Families. Other instruments, such as a declaration on the rights of indigenous peoples, are being prepared.

Thailand's hesitant record towards such instruments is attested by the fact that it has only acceded to two treaties in recent years, namely the CEDAW Convention and the Convention on the Rights of the Child. In both instances, numerous reservations, tantamount to non-acceptance of various rights under the conventions, were entered upon accession. For example, seven reservations were entered to the CEDAW convention and three were entered to the Convention on the Rights of the Child. In the case of the former, the reservations meant that at the national level, various laws and policies, particularly in regard to access to public office, family rights, education, contract, employment and nationality still discriminated against women.² The reservation entered to the right to acquire a nationality was partly influenced by Thailand's reticence to recognize the rights of non-Thais in Thailand, e.g. refugees and stateless persons. The same reservation was entered in the case of the Convention on the Rights of the Child. Two other reservations in regard to the latter confirmed the nationalistic and parochial approach to human rights; the rights of refugee children and the rights of minority and indigenous children to education in the framework of their own culture have not been recognized by Thailand.³

At the national level, institutions for the protection of human rights have existed for many years, albeit indirectly. The judicial system is an example *par excellence*, even though it is at times corrupt, expensive and inaccessible to disadvantaged groups. The Thai press has also been very vocal for the past three decades as an informal mechanism to defend and monitor human rights. The growth of non-governmental organizations has provided another key channel for the promotion and protection of human rights in the face of the State and power groups.

However, until recently, there was no specific state entity vested with the power to deal directly with the broad range of human rights issues. The winds of change blew when the Chuan administration won power in 1992. For the first time, a Parliamentary Committee on Justice and Human Rights was established. Although its work is nascent, the sub-committee has been instrumental in raising various rights issues including the predicament of refugees, women and children, and the rights of those displaced by official dam projects. It has also received complaints from trade unions concerning the disappearance of their leaders, from an official claiming abuse of power by the Attorney General, and

1 For text of key instruments, see: UN, *Human Rights: A Compilation of International Instruments*, New York: UN, 1988.

2 See further: *Report of Thailand (submitted by the Thai Government to the Committee of the Convention for the Elimination of All Forms of Discrimination against Women)*, UN Doc. CEDAW/C/5/Add.51 (June 1987); V. Muntarphorn, W. Jammarnwae and T. Boontue, *Status of Women: Thailand*, Bangkok: UNESCO, 1990.

3 Thailand is currently preparing the national report to be submitted under the Convention on the Rights of the Child. Many forums have already called for withdrawal of Thailand's reservations to the Convention: for example, the national seminar on AIDS and Child Rights organized by ASIANET, Bangkok, August 1994.

from villagers seeking justice against embezzlement by the business sector. The press has lauded the sub-committee's principled stand supporting democracy in neighbouring Burma. This approach was at odds with the Thai Government's policy of "constructive engagement", and its "hands-off" attitude and tacit acquiescence to the illegal military junta in Burma.

However, there are limits to the sub-committee's work. It can only recommend and is not a full-time body. How then can Thais ensure that there is a national entity working full-time and directly on human rights? No such mechanism is in place today. And if one were put in place, how will Thais ensure that it will be effective, accessible, durable, and independent?

At this juncture, it is useful to probe more extensively into the role of law enforcement institutions and personnel who may help to protect or abuse human rights.

One of the key difficulties facing Thai society is the low quality of many law enforcement institutions and personnel. The judiciary and the judicial system are cases in point. The formal judicial system is three-tiered. The first level comprises magistrates courts (Kwang) and provincial courts (Changwat); they have mixed civil and criminal jurisdiction depending upon the seriousness of the case, the provincial courts enjoying broader jurisdiction.

Bangkok has a more extensive system: district courts, Minburi provincial court, Thonburi civil and criminal courts, Bangkok South civil and criminal courts, and the civil and criminal courts.

At the second tier is the Court of Appeal (Uthorn) and at the apex of the system is the Supreme Court (Dika). There is no jury system. In cases concerning conflicts between the Constitution and other laws and policies, it is not the Supreme Court which is empowered to deliberate but the Constitutional Tribunal - an entity more aligned with the executive rather than the judiciary.

The slow judicial process, backlog of cases, accumulated expenses, and the lack of expertise on specific issues has led to the establishment of special courts. The labour court and tax court were set up to overcome these difficulties and to enable appeals to "leapfrog" to the Supreme Court without having to go through the Court of Appeal. The old system of juvenile courts with special judges to deal with child and youth cases was also revamped in 1991 to become the Youth and Family Courts. These special courts are innovative because they provide room for lay judges, due to the desire for more expertise and popular participation. In the case of the labour court, judges from the employer and employee sectors are appointed to sit alongside a professional judge. The same principle applies in youth and family courts, where at least two experts sit to hear cases alongside two traditional judges, one of whom must be a woman.

Another problem hinges on access and relevance. The official judicial system is far removed from the rural people and other disadvantaged groups. There are no mobile courts to service the community. Disadvantaged people are also likely to find the judicial system expensive to use and dishearteningly slow, despite some availability of legal aid. Some promising ways to improve access and relevance include recent experiments to promote informal dispute settlement, particularly through mediation committees drawn from village elders and para-legal personnel at the local level to provide alternative services.⁴ But this approach has at times pitted the executive against the judiciary in terms of overlapping jurisdiction.

A major obstacle facing the local mediation committees is that they may act too much in accordance with their discretion and too little in accordance with the national law. This is exemplified by the difficulties faced by some of the committees when dealing with non-compoundable offenses (e.g. theft is a crime against the State and the thief has to be prosecuted irrespective of the affected party's willingness to drop the case). If they release the accused person upon request from the affected party, this goes against the grain of national law which calls for prosecution of the culprit.

⁴ V. Muncaroni, "Prospects and Trends of Mediation as Alternative to Dispute Resolution in Thailand" in C. Peletz et al. (eds.), *Transcultural Mediation in the Asia-Pacific*. Manila: Asia Pacific Organisation for Mediation, 1988, pp. 393-422.

On another front, there are no administrative courts or ombudsmen to review administrative action. However, there is a current proposal to set up administrative courts as well as a Children's Ombudsman.

Perhaps the key challenge facing the judicial system hinges on the unwritten rules of the game. Corruption is inherent to the system, with hidden power in the hands of court clerks and non-judicial personnel of the court who control many of the papers and documents used in court. If they have vested interests in a particular case, their unwritten *modus operandi* can have negative consequences for the administration of justice, especially where their "price" is too high for all parties.

Lawyers are also susceptible to these charges. Delay and other tactics can significantly undermine the position of litigants. "The defendant is ill today, may I postpone the hearing till next month?" is not an uncommon way to stretch out the proceedings and dampen the enthusiasm of litigants seeking quick and effective remedies. This situation is compounded by holding judicial hearings one month or more apart. Legal ethics may be compromised. Circumstances where the lawyer of one litigant colludes with the lawyer of the other litigant to undermine the latter's own client is not beyond the realm of one's imagination, provided that the price is right. In sum, there is as yet no sure method to ensure "a day in court" and plenty of scope for subverting proper judicial procedure.

With the police and military personnel, corruption, collusion and vested interests are all pervasive, granted that there are good as well as bad personnel. A key concern is poor pay. The police and military may also align themselves with various business interests as part of the economic oligarchy. Uniformed personnel sometimes sit on the boards of large companies.

To make matters worse, the police and military are broadly immune from answering to alleged human rights violations. The military's unreasonable use of force against democracy demonstrators in May 1992 led to scores of civilian deaths and disappearances, and hundreds of injuries. Yet an amnesty decree proclaimed by the undemocratic government before it relinquished its power in May 1992, allowed the perpetrators of human rights violations exemption from responsibility.⁵ The whole affair left a bad taste among those calling for military accountability for crimes committed against civilians. Even with today's democratically elected government, the disgraced military leaders, although deposed in 1992, seem to remain untouchable and elusive in their enjoyment of impunity.

All this underlines that whatever laws and policies there are in Thailand to protect people from human rights violations, they are poorly enforced precisely because powerful vested interests consider themselves to be above the law.

2.1 WELFARE AND DEVELOPMENT

One of the basic queries concerning the quest for democracy in Thailand is to what extent that process responds to the welfare and development of the population at large. At the outset, one may conjecture that unless the democratic path also leads to the overall satisfaction of people's needs - especially those who are impoverished or marginalized - these people are likely to become cynical about democracy and state institutions, such as Parliament, which embody democratic ideals and aspirations.

Two issues deserve special attention in this regard: national development and indicators of progress; social welfare and social security.

⁵ Human Rights Watch World Report 1993, New York: Human Rights Watch, 1993, p 190; *Siam Rath*, 11 November 1992, p 12 (in Thai: *Maitheum*, 10 November 1992, p 1, in Thai).

2.1.1 National Development and Indicators of Progress

In macro-economic terms, Thailand's growth rate during the past two decades has been impressive: it is currently enjoying 8% GDP growth.⁶ The 1994 Human Development Report put Thailand among the top ten economic performers between 1960 and 1992.⁷ Currently, in the global rankings of human development index, Thailand is placed in the "medium HDI" rank as 54 out of a total of 174 countries.⁸

How are the glowing statistics at the international level reflected in the realities at the national and local levels? One of the most glaring discrepancies between macro-economic assessments and local realities is the vast income disparity. Even the state planning agency admits that 55% of the national wealth is in the hands of 20% of the population. If the margin of the well to do is widened to 40% of the population, they earn some 75% of the total national income so that on average the richest earn 12 times more than the poor. Finally, there are 1.5 million slum dwellers in a population of nearly 60 million.

Table 1 highlights the extent of poverty in Thailand as documented by the National Economic and Social Development Board.

Table 1
PROPORTION OF THE POOR IN THAILAND (1990) (%)

Overall	17.98
Northeast	27.67
North	15.56
South	17.98
Central	12.66
Bangkok	3.97

Table 1. Source: National Economic and Social Development Board, Bangkok, 1993.

Northeastern Thailand is clearly the poorest part of the country. The NESDB notes that the percentage of those under the poverty line decreased from 26.3% in 1981 to 18.0% in 1990.⁹

Another disquieting issue is the widening urban-rural gap. And as rural people move to urban areas, slums begin to proliferate. While the wealthy tend to be urban, 60% of the population are still rural based and rely on agriculture for their livelihood.¹⁰ Agriculture, however, is now less important to the Thai economy, contributing just 12.8% of GDP in 1990.¹¹ Yet agricultural decision-making is concentrated in Bangkok, reinforcing a "top-down" development process with insufficient grassroots participation.

Unbalanced development, with poverty and social marginalization for some, has marked both national and local modernization. For the past few decades, the emphasis was macro-economic growth without sufficient regard for micro-economic growth, social development, income distribution and equitable resource allocations.

6 Bangkok Post Economic Review Mid-Year 1994, Bangkok: Bangkok Post, 1994, p.8.

7 UNDP, Human Development Report, Oxford: Oxford University Press, 1994, p.96.

8 The HDI is based on four indicators: life expectancy, income, mean years of schooling, and literacy. The 1994 scores for Thailand were: life expectancy of 68.7 years; 3.9 mean years of schooling; per capita income of \$5,270 (purchasing power parity); and an adult literacy rate of 93.8%. Canada was ranked first overall in 1994.

9 Indicators of Quality of Life, Bangkok: National Economic and Social Development Board, 1993, p.7 (in Thai).

10 According to the Population Census Office, as of September 1994, there were 48,048,119 living in rural areas out of a total population of 58,386,072 overall. Estimates of the rural population vary between 60% and 80%.

11 Indicators of Quality of Life, op. cit., p.4.

II. THE DIMENSIONS OF DEMOCRATIC DEVELOPMENT

Many of these distortions arose in the 1960s when national development planning began. State planning was directly intertwined with an undemocratic military regime that propelled infrastructure projects, industrialization and urbanization, without sufficient regard for rural development and broad-based people's participation. Political dictatorship was expressed in centralized and bureaucratic development planning.

Interestingly, when the first national development plan was enunciated in this atmosphere some three decades ago, it was called a National Economic Plan. The term "social" did not appear then. Only in later plans was the rubric renamed "National Economic and Social Development Plan", thus suggesting greater concern for social issues and micro-economic development.

Today, the Seventh National Economic and Social Development Plan 1992-96 is in place.¹² Although this plan aims for more decentralization, access to the poor, and more equity, it still suffers from the legacy of three decades of top-down planning based on "trickle-down" assumptions that growth will filter down the mass base of the population. Ironically, there has never been a real guarantee that what is earned at the top will be equitably shared at the bottom.

Still, policy-makers have become more conscious of the worst effects of top-down management and of socio-economic injustices. Change began with the Fifth National Plan (1982-86) which put more emphasis on the development of backward rural areas where the majority of the population lived. This has continued in the current Seventh Plan and is bolstered by commitments of the Chuan administration to foster development initiatives to help the poor and marginalized. During the past year, the Government has redistributed large tracts of land to help the farming community and has broadened the base for free or subsidized medical care.

One of the more intriguing experiments in relation to welfare and development has been the adoption of a variety of indicators to monitor human development at the local level. The Fifth Plan's pre-occupation with developing backward rural areas led to the adoption of basic minimum needs indicators (Jor Por Tor). First experimented in Korat province, these indicators were then extended to all parts of Thailand.¹³

At the outset, the basic aim of these indicators was to enable the population to know their basic minimum needs, to improve their quality of life, and to promote cooperation between governmental and non-governmental sectors, with popular participation. The methodology was based on felt needs, input-output assumptions, and performance and coverage. This is clearly manifest in Table 2 which shows how consumption, injection, and cultivation processes exemplify "performance", while the percentage of the groups expected to be covered under the time phase allotted measure "coverage".

Table 2
METHODOLOGY ASSUMPTIONS FOR THAI SOCIAL INDICATORS

Input	Process	Output
Food	Consumption	Increased Weight
Vaccine	Injection	Reduction of Disease
Vegetables	Cultivation	Provision of Food

Table 2. Source: Training Manual for Basic Minimum Needs Indicators in Rural Areas. Bangkok: Ministry of Interior, 1989, Annex pp. 19-20 (in Thai).

¹² Seventh National Economic and Social Development Plan 1992-1996. Bangkok: Pattanauksut Press, 1991, p. 4 (in Thai).

¹³ See further: V. Muntarathorn "Technology and human Rights: Critical Implications for Thailand", in C. G. Weeramantry (ed.), *The Impact of Technology on Human Rights*. Tokyo: UNU Press, 1993, pp. 97-142; 108-109.

A series of indicators, originally 32 and currently 37 in number, was established to be used in selected parts of the country and then extended to the whole country. They are used to determine the needs of villagers and then prompt resource mobilization and responsive social services.

The 37 indicators are divided into 9 groups which focus on: nutrition, shelter, social services, property, income, family planning, popular participation, personal growth, and cultural resources (see Annex 2 for the complete list).

Basically, two types of data are gathered: by the heads of households, which is then synthesized by the sub-district development committee and sent to the province; and by independent collection by the sub-district committee as basic village-wide data.

These data are channelled to the provincial rural development centre where it is computerized and sent to Bangkok for national data banking. The local data are used to identify projects to meet communal basic needs and for mobilizing resources. The pattern of resource mobilization can take three forms: (i) using the villagers' own resources, e.g. planting vegetables; (ii) mixing the villagers' resources with state help, e.g. in setting up a local credit scheme; (iii) relying on state funds to provide basic welfare services.

The indicators are a step forward but have several weaknesses. First, there are very few indicators on political participation whether at the local or national level. Second, the indicators do not touch upon issues of equity, or resource reallocation and the redistribution of wealth. Some provinces are adopting additional indicators, especially if their level of development is already high. One such indicator assesses land tenure. It implies the need to review the status quo and move towards more redistribution of wealth.

A third problem is that the 37 indicators do not cover broadly the interests of marginalized groups such as women, children, the elderly, the disabled, minorities and indigenous peoples. The data collected are not sufficiently desegregated to reflect the special concerns of these groups. However, as will be discussed later in the section on non-discrimination, a new series of more target specific indicators has been proposed in regard to women and children. Fourth, the indicators reflect human needs which call for state assistance, but they do not advocate the claims of the target groups in terms of rights. Much is left to the discretion of the state on whether to respond to the needs. There is thus a difference between satisfying needs and advocating rights.

Whatever indicators of progress appear in terms of statistics, the fact is that even with today's democratically elected government, the gap between the rich and poor remains vast. Social and political will must be harnessed to meet the challenge of equity. As Christensen has observed:

The income distribution gap has both widened and narrowed slightly throughout the transition to democracy, dating from 1973. Equity problems are more the result of what selected governments have left undone, rather than what they have done thereby leading to the following concern: to what extent can a more participatory political system, institutionalized in the parliamentary form of government, be used as a vehicle to create more equity in the economy? In this regard, the Thai political system has performed well for specific interest groups and voters, but it has not yielded policies which are effective for addressing the collective needs of a rapidly industrializing society.¹⁴

At present, there is no wealth tax or capital transfer tax. Land and resources are still controlled by the few and the poor are being increasingly dispossessed of land. The business sector often purchases the land, fuelling landlessness, and converting traditional farmer-owners into tenants, or pushing them to migrate. What is missing are family subsidies and support for the poor and needy.

¹⁴ S. R. Christensen, *Democracy without Equity? The Institutional and Political Consequences of Bangkok-based Development*. Bangkok: Thailand Development Research Institute, 1993, p. iii

Democratic and equity prospects in the countryside will depend on meaningful decentralization so that local people can take charge of their lives, and have greater access to political power and key resources, such as credit.

The reality is disillusioning. Although there is a new draft law to promote decentralization by empowering local councils or "Tambons" to decide upon resource allocations and projects at the local level, the fractious nature of the current administration has prevented quick passage of the bill through Parliament. Even under the new draft law, there are some hidden tentacles of the executive branch of Government based in Bangkok which oppose the transfer of total power to the localities. The current draft law ensures that key officials of the Ministry of Interior will retain their power to influence and even dismiss local leaders, thus denying full-fledged participation by local communities. Moreover, call to elect provincial governors and municipal mayors, as part of the decentralization process, is an unsolved hot potato which could yet undo the Chuan Government.

2.1.2 Social Welfare and Social Security

In traditional Thai society, it was the community and family which provided social safety nets for their members. The role of Buddhist and other monks and their temples offered an age-old focal point for helping the poor and needy. Parallel to this, while village elders and leaders were part of the patron-client relationship, they offered a degree of security to those under their aegis. The family itself "extended", with many generations living together; the younger generations would care for the elderly, and needy relatives could bank upon their better endowed relatives.

The shift from that society to modern-day Thailand has realigned social relationships. Buddhism seems to be in decline with many scandals affecting monks and temples. Village leaders are often tainted with seedy linkages, sometimes with illegal vested interests or as lackeys of political parties to canvass voters and buy votes. The extended family is breaking apart in the face of new work patterns and the pressure to migrate. Farmers are entering industries either full time or as contract labourers, construction workers and factory employees. The pull of industrialization has fragmented traditional social systems and agrarian occupations.

All this prompts a basic question: if the traditional social safety nets are declining, who or what will step in to fill in that void and to provide social welfare and security?

The issue was highlighted most clearly when a tragic accident—a huge fire—befell employees of the Kader factory in 1992. 188 workers died of whom 174 were women, and hundreds of others were injured, due to lack of safety precautions. Many have not been compensated satisfactorily, and action against the factory owners is still pending.

For those who fall under the labour law as formal employees, the safety net is, in principle, provided by a tripartite system of contributions from the state, employers and employees. There has been since 1972 a variety of laws and policies that guarantee the rights of workers (at least in theory), including minimum age and wage, decent working conditions and protection of labour rights by means of a Labour Court.¹⁵ A Compensation Fund has been operational for a number of years to help employees. Basically, compensation for death or injury is provided for those performing their duties. Moreover in 1978, the Provident Fund Act established the possibility of funds for employers and employees on a voluntary basis to cover retired and deceased persons, as well as those whose contract had been terminated; by 1993 there were 692 provident funds with 382,646 members, and 19,276 million baht capital.¹⁶ However, until the introduction of the

15 W. Fungpatana, *Compilation of Labour Laws*, Bangkok: Thammasat University, 1990 (in Thai).

16 *Labour Review in Thailand*, Vol. 12 (2) (April-June 1993), p. 8 (in Thai).

Social Security Act in 1990, no compensation was granted for death or injury due to outside causes, namely those not related to the performance of work. Nor were the families of the affected employees covered by the welfare provisions.

The mindset changed with the passage of the Social Security Act based upon tripartite contributions.¹⁷ Now employees are entitled to claim from the newly established Social Security Fund even though death and injury do not result from the course of employment. Step by step, the new law also seeks to grant help to the families of affected employees, to cover the self-employed, the unemployed, and agricultural labourers who had previously been beyond the purview of the law, as part of the informal sector. In 1992, 2.1 million people eligible under the Social Security Act had sought assistance; another 2 million requested medical benefits.¹⁸

There are several features of the old Compensation Fund and the new Social Security Fund which deserve attention¹⁹:

- a) Both funds do not apply to the civil service and state enterprises.
- b) They do not apply to small scale industries; those with fewer than 20 employees in the case of the old fund and those with fewer than 10 employees in the case of the new fund.
- c) The government can override the powers of the committees set up to oversee administration of the funds.
- d) Contributions are compulsory.

The problem is small-scale industries are not covered. Ironically it is often in these industries that one finds the worst working standards and child labour exploitation. The exemption of state enterprises from the new fund also suggests a degree of diffidence with which government officials treat state enterprises. In practice, at the outset, the cards issued under the Social Security Fund faced various difficulties when some hospitals procrastinated in acknowledging them.

Despite these teething troubles, the new fund is much welcomed. But the new fund has highlighted another glaring loophole. Beyond those who are employed or who fall under the Social Security Act, there is no general provision to help the poor and needy. In other words, there is no general social welfare provision for marginalized groups, except in relation to medical facilities. In view of the disintegration of the family, it may be noted that there is no family subsidy available to prevent its break-up.

So the question is: to what extent should the State step in, perhaps in partnership with other groups, to provide social welfare, while not repeating the mistakes made in other countries which have witnessed cumbersome, wasteful and expensive state welfare systems? Before the coup of 1991, the Ministry of Interior was considering the possibility of a general social welfare act, with the establishment of a fund to help the poor and needy. However, that fell by the wayside. Other initiatives of a more recent nature include the non-governmental sector's proposal to have a new child welfare law with a fund to help the child and family in needy circumstances, but this has not yet seen the light of day.

Many non-governmental organizations agree that the state should contribute to a new social welfare fund, either as an all-embracing fund or specifically targeted to children or families as part of family subsidies.

There is, of course, a risk in this donor-beneficiary approach of creating the psychological dependencies of a "give-take" welfare system. It is just as important to help needy groups create income generating activities. That means ensuring that the marginalized have access to education, technology, resources, employment and credit to empower their own lives without begging for

17 N Chandrawtoon *Social Security Legislation: 35 Years of Dreaming now Realized*. Bangkok: Siam Rath, 1990 (in Thai).

18 Source: *Annual Report of the Social Security Office 1992*. Bangkok: Ministry of Labour, 1993 (in Thai).

19 Bundit Tanacharnetawut, *Siam Rath Weekly* Vol. 40(5) (4-10 July 1993), pp. 18-19 (in Thai).

monthly supplements under a social welfare fund. This is linked with what incentives one provides to home industries and/or small scale industries, self-employment and alternative occupations, especially for farmers to supplement their income through their own activities.

The seeds for this more activated approach towards welfare and security were sown in the Fifth National Plan; it emphasized the need for small scale industries, a sector more likely to benefit rural people and agriculture.²⁰

These trends have been followed by subsequent plans, with some positive consequences. One successful rural industry profiting from this policy is the gem-cutting industry which employs tens of thousands of workers in northern Thailand.

Credit facilities and revolving funds for small-scale industries are now available through state ministries. The private sector has also stepped in more readily to help. Christensen notes that:

(There has been) a secular increase in the expansion of institutional credit throughout the countryside. Estimates are that the commercial banks now account for about 55% of agricultural lending, including loans to agri-business and small scale rural industrialization, compared with about 25% for the Bank for Agriculture and Agricultural Cooperatives and about 20% for the informal market.²¹

Yet the Board of Investment, a key instrument for giving incentives to industries, still only deals with large and medium scale industries. Moreover, the aspirations of state planning are not necessarily realized at the local level due to infrastructure, equipment, and know-how bottlenecks.

These lacunae indicate the need for more reforms to enable rural people and marginalized groups to access training and education, credit, technology, and employment as the basis for improved livelihood, welfare and security. This approach to employment generation should be distinguished from the mere institution of a state welfare system based upon some financial benefits which do not stimulate the target groups to participate in sustainable livelihood. The issue is not simply money. At the heart of the development process is the goal of self-esteem.

2.2 NON-DISCRIMINATION

The Thai Constitution stipulates that all are equal under the law. At first glance, this may suggest that the precept of non-discrimination is entrenched in the Constitution. In reality, this is not so for a variety of reasons. First, the section on "rights" in the Thai Constitution refers to the rights of Thai nationals rather than the human rights of all persons on Thai territory, irrespective of nationality, gender and other origin. Second, the Constitution is not justiciable in ordinary courts of law; the claim of non-discrimination is dependent on other laws (e.g. the labour law), to make it truly justiciable. Third, there is still no general law concerning equal opportunities and protection against discrimination.

These anomalies put a variety of groups at potential risk of discrimination. Key among them are women, children, minorities, indigenous peoples, refugees and drug addicts.

20 Fifth National Economic and Social Development Plan 1982-1986. Bangkok: National Economic and Social Development Board. 1981

21 Christensen, *op. cit.*, p.27.

2.2.1 Women

An intriguing anomaly of Thai society is the prefix attached to names to indicate gender and marital status. The prefix for a man's name is "Nai", meaning Mr., whether or not the man is married. But a woman has two prefixes depending upon whether or not she is married. If she is married, she has to use the prefix "Nang", the equivalent of Mrs. If she is unmarried, the prefix "Nang Sao" is used, denoting Miss. However, there is no equivalent in Thai for the English prefix of "Ms." which seeks to avoid identifying whether a woman is married or not.

The linguistic difference between the male and female in Thai society is indicative of many forms of gender inequality which persist in the political and other fields.

There are historical and cultural reasons for these forms of discrimination against women in Thailand today. Although during the Middle Ages—the Sukhothai era—the status of Thai women was quite high, during the subsequent Ayudhaya period, there was a distinct decline of the status of women. The Law on Husbands and Wives 1361, for example, allowed men to practice polygamy and wives were divided into various classes. Husbands could also punish their wives physically, and there was even a maxim which stated that "women are buffaloes; men are humans".²²

That kind of mindset was impugned by a more enlightened monarch a century ago. Rama IV prohibited men from selling their wives and forbade parents from compelling their children to marry. His successor, Rama V, went further by abolishing slavery and conferring more decision-making power on women. In 1932, during the reign of Rama VII, absolute monarchy was abolished, and with the introduction of the first Constitution, women were granted the right to vote as part of universal suffrage.

After the Second World War, Thailand was exposed to international standards concerning women, including the 1948 Universal Declaration of Human Rights. In the lead-up to the United Nations initiative declaring 1975 as International Women's Year and 1976-1985 as the UN Decade for Women, there was more room for self-appraisal on how to improve laws, policies and practices concerning women's rights. Of great significance was the adoption of the 1974 Constitution which stated explicitly for the first time that men and women have equal rights (section 28) and called for reform of various discriminatory laws. This led to the repeal of various laws which were unsatisfactory, e.g. Ministry of Interior Regulations prohibiting women from becoming public prosecutors, and Ministry of Justice Regulations prohibiting women from becoming judges.

At the national level, the government established in the mid-1970s a National Executive Committee to implement the aims of the International Women's Year. National development planning also took account of women's development more seriously. This was followed by the establishment of the National Commission on Women's Affairs, which was later converted into a permanent body known as the National Commission for the Coordination of Women's Development.

Despite these innovations, there remain disquieting obstacles to women's development. Women make up about half of Thailand's 60 million citizens. They constitute 47% of the total labour force, and are active in many fields including agriculture, services, and industries.²³ This demographic power and economic contribution is not reflected in decision-making positions. Table 3 shows the number of women in key decision-making positions in the democratic process.

22 *Status of Women: Thailand*. Bangkok: UNESCO, 1990. p. 3

23 *Women's Development in Thailand Second Decade (1986-1995)* (Draft). Bangkok: National Commission for Women's Affairs.

Table 3
NUMBER OF WOMEN IN POLITICAL DECISION-MAKING POSITIONS (1992)

	Total number of places (male and female)	Number of Women
Cabinet	49	0
MPs	360	15
Senators	270	8
Mayors	132	9
Kamnan or Sub-district leader	6,950	72
Pouyai or Village leader	63,373	856
Members of sub-district council	61,841	238
Members of village council	339,377	20,214

Table 3. Source: National Commission for Women's Affairs, Bangkok, 1993.

While the statistics show glaring disparities between the genders, to be fair, one should note that various governments have tried to redress the gender imbalances for the past two decades, particularly through the National Economic and Social Development Plans. The need for more gender equality is also covered in a specific national plan on women's issues, known as the 1982-2001 Long Term Women's Development Plan. The latter is particularly influenced by the global trends on women's development and women's rights, especially in relation to education, employment, health, cross-sectoral participation in decision-making, and law and legal rights.

A key innovation in 1985 was the adoption of various indicators to raise the status of women after the end of the UN Decade for Women. These will be appraised in the forthcoming World Conference on Women to be held in Beijing. In relation to women's participation, three indicators were adopted by the Thai authorities, as follows ²⁴:

- Encourage at least 30% women's participation in local development committees and administration.
- Encourage political parties to nominate at least 30% of women for electoral participation.
- Encourage at least 30% women's participation in executive and policy-making offices at the national level.

A decade later, have these targets been realized in Thailand? The brief answer is no, although there have been some improvements. Locally, only about 5% of decision-making positions were held by women in 1987 and 1992. Men clearly dominated at all local power levels. Provincially, women accounted for just 2% of all provincial councillors in 1980. By 1992, this figure had doubled. In 1980, women represented about 5% of the 356 municipal members nationwide. In 1992, only 9 of 132 Thai mayors were women. There were 120 women municipal councillors out of 2,166, or 6% of the total members of municipal councils in 1992.

At the sub-district level, women still only accounted for 1% of 6,950 chiefs and 4% of assistant chiefs in 1992. And while the number of women village chiefs increased over the decade 1982-1993, they still only represented 1% of a total 63,373 village chiefs.²⁵

²⁴ *Ibid.*, p. 10

²⁵ *Ibid.*, pp. 13-14

The absence of women decision-makers at the local level was in great part due to discriminatory laws which prevented women to run for office as village chiefs and sub-district chiefs. That law was discarded in 1982, but it will take a long time before women can increase their numbers markedly in these positions.

Women's limited access to power is also evident at the national level, although there have been recent improvements. The 1986 election returned just 12 women to Parliament, 3 % of successful candidates. In the 1992 election, there were 15 successful women candidates; about 4% of all elected parliamentarians. Of these few, one was among the top ten vote-getters nation-wide, one was the top vote-getter in Bangkok, and one was the first-ever elected from provinces with predominantly Muslim populations.²⁶

Women are also grossly under represented in the Thai bureaucracy. In the early 1990s, only 46 of the 493 top-flight administrative positions are held by women. Despite the fact that there are more women civil servants throughout the Thai government, these numbers of high level women officials does not meet the 30% target for participation in decision-making as recommended.²⁷

The realities are thus not reassuring; the 30% targets have not been met, and despite some improvements, women's access to political power in the broadest sense of the word is still hampered by remnants of paternalism.

Women's access to decision-making positions is not the only issue at stake, although closely related to democratic aspirations and gender democracy. There remain many marginalized groups of women, including rural women, women in slums, low income women, women in prostitution and non-Thai women on Thai territory, such as refugees. Many of these groups suffer the repercussions of both *de jure* and *de facto* discrimination.

There are also legal impediments to the fuller realization of women's rights, ranging from Thailand's participation at the international level to official attitudes at the national level. The most obvious discrepancy is the fact that when Thailand acceded to the CEDAW Convention, it entered seven reservations to women's rights in Thailand on certain issues. These comprised equal rights concerning access to public office, education, labour, family law, nationality, contract, and dispute settlement by the World Court. Three reservations have now been withdrawn, namely those concerning labour, contract, and nationality. However, the fact that several others remain indicate divergences between national law and international standards. The anomalies concern the constitution, public office, nationality, family laws, labour laws, education, prostitution, abortion, and domestic violence.

Although the current Constitution stipulates equality before the law, it does not explicitly propound equality between men and women, unlike the 1974 Constitution. The concerns of women are also placed in the "policies" section of the Constitution which is less binding than the section on "rights". Several women's groups have called for amendments to the Constitution with specific provision on equal rights between "men and women".

A primary reason why past administrations refused the equality provision in the CEDAW Convention on holding public office was because women were not allowed to become sub-district officers, a key administrative position under the Ministry of Interior. Women are also prohibited from entering the Military Academy, although they are not prevented from teaching there. To the credit of the Chuan Government, the first obstacle has been discarded: women can now become sub-district officers. The administration has also approved one woman as a provincial governor. But the impediment concerning access to the Military Academy remains. Ironically, and by inverse reasoning, it is men from such academies who have been responsible for the various coups. Thus paternalism and authoritarianism are collaborative bedfellows!

²⁶ *Ibid.*, p. 15

²⁷ *Ibid.*, p. 15

The reason the reservation under the CEDAW Convention was withdrawn was that in 1992-93, the Thai nationality law was amended. Previously, Thai women marrying foreigners could not transfer their Thai nationality automatically to their children, although if a Thai man married a foreign woman and had a child with her, Thai nationality was automatically conveyed to the child. The new law confers Thai nationality automatically upon the children of Thai mothers married to foreigners. However, there remains an anomaly; if a Thai man marries a foreigner, Thai nationality is automatically conveyed to the wife, but if a Thai woman marries a foreigner, there is no automatic grant of Thai nationality to the foreign husband.

Numerous families still regard the son as the bearer of the family name and provide opportunities and resources to the son before the daughter. There remain strong cultural impediments to gender equality which will need sustained community mobilization to alter practice. The law itself is also imperfect and perpetuates gender discrimination.²⁸ First, even betrothal is still a site of inequality. Under the Civil Code, the male and female fiancé can call off the engagement if certain important circumstances disrupt the engagement, such as the appearance of another suitor. However, the law provides the man with an additional privilege. He is entitled to claim compensation from another man who has had sexual intercourse with his fiancé. There is no equivalent provision for the woman to claim against a person who has had sexual intercourse with her fiancé.

Second, although the law provides similar grounds for divorce in the case of the husband or wife, there is one basic difference. A man may claim divorce on the ground of his wife's adultery. By contrast, for a woman to claim divorce, it does not suffice for her to claim the husband's adultery. She has the added burden of proving that the "husband has given maintenance to or honoured such other woman as his wife" (Section 1506, Civil Code).

Third, although monogamy is now part of the law, there is no legal sanction against bigamy as such. As it is men who tend to be bigamous, the gender disparity is obvious. Some NGOs have advocated, without success, the need to stipulate one's marital status on the identification card that all adults carry.

Fourth, despite attempts to change the law, the 1982 Names Act provides that on marriage a woman has to change her name to that of her husband. The male is thus seen as the carrier of the family name and heritage, reinforcing the subservient position of the female in the family structure.

Finally, there is an ongoing debate on whether the crime of rape should apply to men who force their wives to have sexual intercourse with them. The current marriage registration allows complete license.

In theory, in Thai labour equal pay is guaranteed for all, irrespective of gender. In practice, women are often paid less than men, and the girl child is often paid less than the adult. Labour protection also tends to cover those only in the formal sector, rather than the informal sector. Thus women domestic servants are beyond the protection of the law. Still, the Chuan government must be credited for extending maternity leave to 90 days for all women in both the public and private sector.

There is generally equal opportunity of access to all educational institutions. However, some official institutions still bar women from entering them, notably the Military Academy. Various institutions also have hidden quotas to prevent too many women from entering them, a *de facto* rather than *de jure* discrimination.

The issue of prostitution in Thailand is known world-wide. There are many laws and policies related to this, but the real question is: "why are they so ineffective and why are there so many women and children in prostitution?"

While poverty explains the push factor which drives people into the trade, there is also a demand factor which has to be taken into account: there are both local and foreign customers. Moreover, new cultural practices have arisen whereby parents in many communities accept the fact that women

28 *Status of Women: Thailand*, op. cit., pp.35-37

and children can be sold for sex and the earnings are to be sent home to feed the parents, irrespective of the morality of the issue and the damage done to those in prostitution. There is also an extensive criminal network that benefits from the trade.

Thai laws on prostitution are antiquated. Not only is there lax law enforcement, but some actually help the culprits. One glaring unjust law is the 1960 Prostitution Suppression Act. This statute establishes the crime of prostitution as an act of "promiscuously rendering sexual service for remuneration".²⁹ Every party —prostitute and pimp— is liable. But police interpret the law such that customers fall outside its purview. It is the women and girls in prostitution who tend to be arrested and fined. The pimps and other intermediaries tend not to be punished, or pay their way out of punishment.

There are two draft bills to reform this law. One takes a preventive approach. It calls for a special committee to deal with the issue and emphasizes rehabilitation of women and children in the trade, and severer punishment for pimps and procurers. The second draft law covers sale and trafficking of women and children both internal and international. It also advocates a new offence concerning conspiracy to trade women and children, and stiffer penalties for the traffickers. However, the key issue in the short term is law enforcement; there are already laws which can be used to punish those who profiteer from women and children in this field, but they are not effectively enforced against the profiteers and criminal networks that exploit women and children.

Abortion and abortion law affect the immediate physical and mental health of women and rights concerning their bodies. In Thai law abortion is illegal, except in two cases: (a) where the abortion is undertaken by a doctor for the sake of the woman's health; and (b) when the abortion is undertaken by the doctor when a woman is pregnant due to a sexual offence, such as rape.

There have been several attempts to broaden the exceptions, to cover failed contraceptives and the foetus' infirmity, for example. But religious lobbies have blocked these attempts. The fact is that there are many clandestine abortions, and many settings are unsafe for the women concerned.

There are increasing reports of violence against women, especially in the home. Although the criminal law protects women from such violence, the problem is compounded by its invisibility. Society still tends to regard these issues as matters to be resolved in the family rather than in public and under the full exposure of the law.

In sum, law and social policies have attempted to keep pace with the evolution of Thai society in recent decades, but practice still lags behind need and leaves much to be desired. Laws are poorly implemented, while some cultural and traditional practices which discriminate against women remain entrenched. Affirmative action, through quotas for women in various positions, has been touted by some lobbies although it has not been officially accepted. There is still a long road ahead in broadening the notion of democracy and human rights to benefit women and the girl child at all levels, from the home and the community, to the workplace and the nation.

2.2.2 Children

There are an estimated 19 million children between 0-14 years of age, and 12 million adolescents between 14-24 years of age in Thailand.³⁰ At the outset, it may be noted that while the Convention on the Rights of the Child defines the term "child" to cover those under 18 years of age, the term is more ambiguous in Thailand. There are a variety of definitions. In the Act to Establish the Youth and Family Court 1991, the term "child" is defined as a person above 7 but under 15, while "youth" is defined as persons between 14 and 18. In the Civil Code, a person reaches the age of maturity at 20, although if the person marries before then, he/she attains the age of maturity. In criminal law, a

29 Ibid., p 41

30 National Youth Bureau, Bangkok, 1994

child between 7 and 14 cannot be held criminally liable. In the Revolutionary Announcement No. 294, the "child" is defined as a person under 18 years old.

Paternalism, authoritarianism and excessive nationalism have contributed to discriminatory practices against children. Children were once considered as the property of their parents. Today, although the status of the child has improved, under the criminal law, the child cannot prosecute his or her parents for abuses. The Attorney-General's Office can do so on the child's behalf, but that is rare.

There is a pervasive belief in Thai society that children should be grateful to the parents and show filial duty by undertaking merit-making tasks for the parents: "Katanyu". In traditional culture, the child's duty towards the parent rather than the child's independent rights has been emphasized. The girl child is doubly disadvantaged because parents tend to favour sons. For example, the daughter may take second place to the son in terms of schooling and heritage. Paternalism is taken to the extreme when parents agree to sell their children wittingly or unwittingly into exploitative trades, including child labour in factories and child prostitution. Often the children send the money home to feed the parents. Children have thus become objects of profit in several communities in modern-day paternalism.

There is also a connection between authoritarianism and child rights. Many of the laws that have negative impact on children and their families were passed during Thailand's authoritarian era, particularly from the 1950s to the 1970s. A classic case is Revolutionary Announcement No.294 which took a punitive approach to families and children in trouble.³¹ State officials were empowered to punish parents for the wrongs of their children and to institutionalize children who had committed acts in conflict with the law. This approach paid scant or no regard to the root causes, to prevention, or to social rehabilitation. It was a typical part of the top-down law-making during the military era, without scant regard for social development for the child and the family. In recent years, many NGOs have called for reform of this law and want to erase the word "Revolutionary Announcement" from the statute books.

Excessive nationalism has meant that children unable to prove Thai nationality, or non-Thais on Thai territory, are marginalized. The classic case is children born of refugee parents or stateless parents now on Thai soil. At one time, the Thai Nationality Act conferred Thai nationality upon them by reason of their birth on Thai territory (*ius soli*). However, Revolutionary Announcement No.337 abolished that entitlement, and the Thai nationality already granted to the children of refugees and stateless persons was withdrawn retroactively.³² This has caused untold hardships, giving unenlightened law enforcement personnel an opportunity to corruptly reap profits from those whose nationality has been revoked. Although the Thai nationality law was amended in 1992-93 to help the children of Thai women, the changes did not benefit other children; the status of non-Thai children, born on Thai soil, is still threatened with statelessness unless other countries lend a helping hand.³³

While Thailand is now party to the Convention on the Rights of the Child, it has entered three reservations concerning the right to acquire nationality, the rights of refugee children, and the right to education for minorities and indigenous peoples based on their culture. These reservations are signs of excessive nationalism and parochialism which read children's rights as the exclusive rights of Thai children, rather than the rights of all children, including those of other ethnic or national origins.

31 *Compendium of Laws and Regulations Concerning Children and Youth*. Bangkok: National Youth Bureau, 1986, p. 169 (in Thai).

32 *Ibid.* p.315

33 Nationality Act No 2 and No 3. *Royal Gazette*, vol. 109, Part 13, 25 February 1992, pp 3-6 Vol. 109, Part 42, 6 April 1992 pp 94-95 (in Thai)

That said, state development planning has become more concerned with children's issues and children's rights in recent years. The current Seventh National Development Plan has specific sections on child development, to³⁴:

- a) Accelerate and expand the preparation of children in the pre-school period (for those between 0-5 years old).
- b) Accelerate vocational training for young persons out-of-school (between 14-25 years old) both quantitatively and qualitatively.
- c) Expand basic education from 6 to 9 years for children between 6-14 years old.
- d) Develop ethics, values and the democratic process in the life of children and young persons.
- e) Accelerate prevention of AIDS, protect children and young persons from the disease, and promote rehabilitation.
- f) Accelerate the protection, rehabilitation and development of children in difficulties, such as child labourers, children in prostitution, children addicted to drugs, and street children, and respond to the basic minimum needs of children.
- g) Promote and develop gifted children and young persons, e.g. in the arts and sports.

This plan is bolstered by certain numerical goals which are tantamount to indicators during its operation (Annex 3). These indicators are more detailed than the national basic minimum needs referred to earlier in this study. They are heavily influenced by the indicators evolved by the National Youth Bureau with the help of the non-governmental sector, and reflect, to a large extent, the goals set by UNICEF globally and by countries under that umbrella.

The Seventh Plan is still in progress, and it would be premature to evaluate whether the numerical goals are fulfilled. Yet, some observations can be made at this stage. First, the goals related to child survival and development, such as nutrition and immunization, are more likely to be fulfilled than the goals relating to protecting children in trouble, such as children in prostitution. The challenge with the latter is more demanding; ranging from the need to counter the sale of children to more effective law enforcement and eradication of corruption.

Second, various goals concerning the development of children, particularly lowering school drop-out rates, still face an uphill struggle. One of the problems with Thai education is that while there is broad access to primary education, many children drop-out before completing the sixth form. Edicts to reduce the drop-out rate will not work, as the issue has much to do with how families can be assisted to have better income and alternative occupations so that there is an incentive for their children to attend primary education.

Third, the indicators on democracy and child participation at home, in the community and at the national level are vague. For instance, how does one prove that 80% of Thai youth understand democracy when the content of democracy in school curricula emphasizes elections and the parliamentary process, rather than broad-based notions of democracy in the home, locality, and workplace? It would have been better to use an indicator such as "to lower the voting age from 20 to 18 by the end of the Seventh Plan". This is in fact a proposal currently tabled by pro-democracy and constitutional reform groups.

Fourth, there are no indicators of public knowledge of child rights or of children's knowledge and advocacy of their own rights. Again the approach of the national plan is based upon "needs" depending upon state discretion rather than rights to be advocated against the state and other power groups.

Fifth, there is only a cursory reference to children in trouble, although the numbers of these children are vast. They include the girl child, child labourers, child prostitutes, street children, child

³⁴ Child and Youth Development Plan in the Period of the Seventh National Economic and Social Development Plan (1992-1996). Bangkok: National Youth Bureau, 1992, pp 10-11 (in Thai).

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drug addicts, AIDS-affected children, refugee children, disabled children, child victims of armed conflicts, child victims of domestic violence, children in conflict with the law, and so on.

The quantitative goal of satisfying the needs of 30% of these groups is questionable, especially as the various groups are not identified sufficiently in the current indicators as target groups for programmes. Social policy must address the concerns of marginalized children and children in difficulties as key groups requiring concrete responses to eradicate discrimination against them in terms of law, policy and practice. Let us illustrate how such discrimination looks in practice.

A) The Girl Child

We know that by tradition and culture, the girl child is disadvantaged when compared with the boy child. This must be nuanced in the context of education. In terms of educational enrolment, there are more boys than girls at the primary and lower secondary levels, but there are more girls at the upper secondary level and in relation to completion of tertiary education. Tables 4 and 5 highlight these facts.

Table 4
NUMBER OF STUDENTS ENROLLED IN PRIMARY AND SECONDARY SCHOOLS
BY GENDER 1985-1990

	Year	Female	Male
1. Primary	1990	3,375,341	3,578,941
2. Lower secondary	1985	598,294	704,694
	1990	674,541	741,457
3. Upper secondary	1985	281,708	277,716
	1990	254,223	233,820

Table 4. Source: *Women's Development in Thailand: Second Decade (1986-1995) (Draft)*. Bangkok: National Commission for Women's Affairs, 1994, p. A9.

Table 5
NUMBER OF GRADUATES FROM PUBLIC AND PRIVATE UNIVERSITIES
BY TYPE OF DEGREE AND GENDER

	Female	Male
Certificate	919	2,566
Diploma	436	795
Bachelor degree	37,594	28,893
Graduate diploma	395	533
Master degree	2,567	2,597
Doctoral degree	32	36
Total	41,943	35,420

Table 5. Source: *Women's Development in Thailand: Second Decade (1986-1995) (Draft)*. Bangkok: National Commission for Women's Affairs, 1994, p. A11.

Yet this early head start is not maintained later because access by women to decision-making positions, particularly in politics, is much lower than for men. This suggests the need for greater mobilization of women and the girl child to gain more access to key decision-making positions during and after schooling.

B) Child Labourers

Employment of children under 13 years of age is illegal in Thai labour law, but in reality, there are large numbers of under 13-year-olds who are employed at work. A government estimate from the National Youth Bureau suggests that 13-24 year olds constitute 35% of the labour force.³⁵ A recent study by the Chulalongkorn University Social Development Institute indicates that in the late 1980s, there were approximately one million children and four million youths engaged in some kind of work.³⁶ A key concern is how to ensure that those who are invisible are more visible and that the statistics are desegregated sufficiently to reflect gender and other origins.

While poverty and family disintegration are the supply-side root causes driving children into the labour market, the demand side of the problem—customers and intermediaries—is not sufficiently dealt with. Small-scale industries are often the culprits in this process. There are also transnational criminal networks at play luring children from neighbouring countries into Thailand, including from Burma, China, Laos, and Cambodia. The damage inflicted upon children includes torture and death.

The current labour law provides for minimum age, wage and decent working conditions. However, there is lax law enforcement. The authorities also complain that they do not have enough labour inspectors. Often when factories are raided, it is the non-governmental organizations rather than the governmental sector that activate the process, suggesting a less than effective official system.

The ways to counter the exploitation of child labour currently include more anti-poverty strategies, ensuring that children stay at school for 9 years rather than the present 6 years, and raising the minimum age. There are two lobbies in this regard; one favours keeping the minimum age at 13 but advocating more facilities including education for children at work; the other favours raising the minimum age to 14 or 15 in keeping with the standards of the International Labour Organization. The situation is also linked with how the family can be sustained with more income generating activities, together with access to credit, education, employment, technology and family subsidies, rather than having to exploit the children to fulfil the family's needs. This was referred to in the earlier section on social welfare and security.

C) Children in Prostitution

There are no reliable statistics of children in prostitution. In fact, there are conflicting figures. Some sources claim 800,000 children in prostitution; others claim that there are fewer than 100,000.

These numerical differences should not disguise the fact this is an enormous problem in the country. The girl child is particularly affected because it is she who is often pushed or sold into the trade. The situation has also become more transnational, as there are many girls from Cambodia, Burma, China, and Laos who are lured into the trade in Thailand and beyond. Criminal networks operate across frontiers, while foreign paedophiles look for their prey in this country. There is also a clandestine export of women and children to other countries, including to Japan. In recent times, more boys have also entered the trade. As AIDS is spreading rapidly via the sex trade, the threat to child victims of this sector is growing alarmingly.

35 National Youth Bureau, Bangkok, 1994

36 C. Banpasinchosa and A. Pongsapich, *Child Workers in Hazardous Work in Thailand*, Bangkok: Chulalongkorn University Social Research Institute, 1992, p. 1.

As with women prostitutes, child prostitution is totally illegal in Thai law. Use of children as victims of this trade is in breach of the Criminal law, the labour law and a variety of other laws and policies. There is also a current draft law on the sale and trafficking of women and children which will criminalize both local and transnational trafficking of women and children, and impose severe penalties on the profiteers.

However, there remains the fact that law enforcement is weak. At a recent seminar on child trafficking organized by ASIANET, one high-ranking policeman admitted that often the police fear to act on behalf of the child because there are "dark forces" at work, presumably mafias with political clout.³⁷ The issue of child protection is reminiscent of the challenges already addressed in regard to child labour; while one needs to tackle the root causes, including poverty and family disintegration, one must also counter the demand side which is allied to criminal networks.

On the corrective side, one must offer redress and rehabilitation for all the victims. There is also the difficulty of values which are being debased for the sake of money —the child as a sex object for consumerism. This will need stronger socialization to reorient the values of communities and parents who accept child prostitution as a means of livelihood and to nurture attitudinal and behavioural change so as to view it as a bane rather than a boon. Meanwhile, in the short term, law enforcement must be improved, and this can be done by providing more incentives for good policing and by networking more effectively with the community at large as a vigilant system for child protection.

D) Other Groups of Children in Difficulties

The list is almost endless and has already been cited. All face disadvantage and marginalization, the primary stumbling blocks in promoting non-discrimination. Practical action should aim at prevention of the root causes, protection of children from abuse and exploitation, social and other rehabilitation of child victims, more child participation in protecting themselves, and more community intervention on behalf of the abused child. Addressing the plight of the child is merely one side of the coin. Equally important is helping the family serve as or become a true safety net for its younger members; much will depend upon not only income generation and anti-poverty measures but also family subsidies, care and education.

2.2.3 Refugees

The issue of refugees and asylum-seekers in Thailand is age-old. In bygone days, Thais had a liberal attitude towards granting foreigners asylum. But the past three decades have seen more stringency towards these persons, conditioned by political and security considerations in Thailand and its immediate neighbours. En passant, it may be observed that Thailand is not a party to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol. Under the 1951 Convention, the term "refugee" is defined as a person fleeing his/her country of origin for a well-founded fear of persecution. The most important internationally protected right inherent in refugees is "non-refoulement", namely the right not to be pushed back to countries where refugees have a well-founded fear of persecution. By international law and practice, the assistance and protection accorded cover both political persecutees and victims of man-made disasters, such as armed conflicts. These have been supplemented by various persuasive Conclusions adopted by the Executive Committee of the office of the United Nations High Commissioner for Refugees (UNHCR).

Thai immigration law has tended to classify persons seeking refuge as "illegal immigrants" without rights on Thai soil, rather than as refugees with rights protected in international law.³⁸

37 Seminar on Child Trafficking organized by ASIANET, Bangkok, May 1994.

38 V. Muntarborn, *The Status of Refugees in Asia*, Oxford: Clarendon, 1992, pp.125-141.

This parochial-cum-nationalistic approach is at odds with the universality of human rights, and reinforces discrimination.

These generalizations must be nuanced by specific consideration of how the several groups of refugees on Thai soil have been affected by government attitudes and the application of law. The four main refugee groups have been Cambodians, Vietnamese, Laotians and Burmese. There has also been a residual group of non-Indochinese refugees, from Afghanistan, Iran and Sri Lanka. Official attitudes vary towards each group, some have been better treated than others. One must also credit the Thai authorities for shouldering a huge caseload of refugees; on many occasions, humanitarianism has prevailed. Millions have sought refuge and have passed through Thailand in search of refuge during the past three decades. Thailand has also provided refugees on Thai soil with elementary education, and basic services akin to those advocated by the Refugee Convention.

Still, from time to time, parochialism and intolerance have reared their heads, particularly in relation to sporadic push-backs of those seeking refuge on Thai soil, acts tantamount to discrimination and unwarranted nationalism. The fact that refugee children do not have access to higher education also indicates a discriminatory practice which fails to nurture the development of these children. Meanwhile, there have been intermittent reports of physical and mental abuses of refugees in camps, at times committed by warring factions seeking to manipulate camp inhabitants. In the 1980s, violence against women and children was a particular concern when Cambodian refugees were kept in sites near the Cambodian border where military elements would intrude. In relation to long-term solutions for the plight of refugees, Thai officials have rejected local assimilation of refugees outright, unless they have some ethnic links with Thailand. In recent times, the solutions adopted have been based upon resettlement in third countries and voluntary repatriation to the country of origin, depending upon the group of refugees. Table 6 documents the distribution of refugees in Thailand by country of origin.

Table 6
NUMBERS OF REFUGEE AND ASYLUM-SEEKERS IN THAILAND (END OF 1993)

Vietnamese	9,797
Lowland Laotian	3,478
Laotian Hilltribe	23,216
Cambodian	67

Table 6. Source: UNHCR, 1994

There are also an estimated 100,000 Burmese refugees and asylum-seekers remaining in Thailand. Before the repatriation of Cambodians in 1992, there were also some 350,000 Cambodians in various sites on Thai soil. During the 1970s and 1980s, Thailand was often host to some half a million refugees at any one time.

The eclectic consequences of Thai law, policy and practice can be seen in regard to the major groups of refugees on Thai territory as follows:

A) Cambodians

Major influxes of Cambodians into Thailand took place between 1975 and 1985 due to the instability in Cambodia. Although according to the Thai Immigration Act 1979, they were "illegal immigrants" *stricto sensu* and could be pushed out of the country at any time, international pressure

and national practice attenuated the stringency of the law. The nuances of law, policy and practice were seen by the policy adopted in 1980 known as "humane deterrence".³⁹ This advocated the following strictures vis a vis Cambodians:

- a) The Thai border would be closed to new arrivals.
- b) Those illegally entering Thailand would be kept under close detention in austere camps.
- c) There would be no resettlement of new arrivals in third countries.
- d) Treatment of those persons would be of a minimum standard not higher than strictly necessary for their subsistence.

In fact, Cambodians continued to arrive after that date, and the Thai authorities allowed them to stay in Thailand temporarily without pushing them back across the border. The fate of Cambodians was resolved when the Cambodian Peace Accord was finalized in 1991, enabling them to return. In 1992, some 350,000 Cambodians went home. However, all is not golden. In 1994, due to continued fighting in Cambodia, groups of civilians sought to enter Thailand again but were pushed back by Thai officials. This was in breach of the international principle of non-refoulement whereby countries must not push back refugees to the countries where they have a well-founded fear of persecution. The instability in Cambodia continues and there may be future influxes of refugees into Thailand.

B) Laotians

There are two groups: hilltribe and lowland. Particularly sensitive is the former group, as it had close connections with a pro-US and anti-Socialist Government movement in Laos in the latter part of the 1970s and 1980s. Despite the fact that local immigration law could also be applied to all Laotians seeking refuge in Thailand, the policy has been different. They have been allowed to stay temporarily subject to a screening procedure introduced in 1985 to differentiate between refugees and non-refugees, using the international criterion of well-founded fear of persecution. Those passing the test would be allowed to stay in Thailand pending resettlement in third countries. Those failing the test would be returned to Laos as illegal immigrants from Thailand. This was confirmed by an international agreement known as the Comprehensive Plan of Action, dealt with below, covering both Laotian and Vietnamese asylum-seekers in South-east Asia. The current Thai policy is to ensure that all Laotian non-refugees return home by 1994.

C) Vietnamese

It is important to distinguish between two main groups of Vietnamese seeking refuge in Thailand: those arriving in the 1950s, known as the Dien Bien Phu refugees, and those arriving after 1975 when the government in Vietnam changed hands and adopted a socialist system. Although in regard to the former, Thailand has tried to explore the possibility of repatriation to Vietnam, this has not borne fruit. The attempt to return them has also been illogical in that the Dien Bien Phu Vietnamese had originally wished to escape from socialism, still the current system in Vietnam.

This group has been particularly affected by Thailand's volte-face concerning nationality law. The original Thai Nationality Act referred to above conferred Thai nationality upon the children of this group when born on Thai territory. Many acquired Thai nationality due to this. However, by Revolutionary Announcement No.337, their Thai nationality was revoked even retroactively. Many of the descendants of this group are now in a limbo status on Thai soil, and are effectively stateless.

In regard to those arriving after 1975, the initial policy fluctuated between granting them temporary refuge and pushing them back by land and sea. This eventually led to the adoption of the 1989 Comprehensive Plan of Action and the establishment of screening procedures in Thailand to

39 US Congress. *World Refugee Crisis: The International Community's Response*. Washington: US Congress, 1979. pp.134-135

determine refugee status, using the international criterion of well-founded fear of persecution for those arriving on or after the cut-off date of 14 March 1989.⁴⁰ Those screened in would be eligible to resettle in third countries, while those screened out as non-refugees would have to return home. The most recent proposal is to ensure that all non-refugees return to Vietnam by 1995. Under the Comprehensive Plan of Action, Vietnam has also agreed to deter clandestine departures from Vietnam and to facilitate emigration for those wishing to leave by means of an Orderly Departures Programme.

D) Burmese

This group is faced with the most serious problems in Thailand at present, and Thai law and policy have veered towards stringency rather than flexibility in recent years. The air of ambivalence is compounded by the fact that there is no official screening procedure to determine refugee status. As noted by a commentator:

"Before 1989, Burmese asylum-seekers were liberally permitted to stay temporarily in Thailand. In November of that year the government even stated explicitly a policy of temporary refuge for the Burmese. However, the policy changed in 1990, and some Burmese asylum-seekers were pushed back into Burma. The policy turned more restrictive with arrests of Burmese in Thailand and the potential establishment of a camp for Burmese students on Thai soil. The attitude of local policy-makers has been to avoid internationalising the Burmese issue, and they have prevented international agencies from becoming involved."⁴¹

In fact, there are two categories at stake. The first is a large group of ethnic minorities from Burma who are now in various encampments along the Thai-Burmese border. Their flight has been linked to the armed conflict between the military junta in Rangoon and ethnic groups seeking self-determination.

The second group are students and other pro-democracy advocates who fled repression in Burma from 1988 onwards. A so-called "safe area" camp has now been established for this group. If they are found to be outside the camp, they may be detained in the immigration prison where conditions are appalling. In recent times, there have been sporadic push-backs of this group to the Thai-Burmese border in breach of international law.

Thai policy towards these refugees is intertwined with the official foreign policy of constructive engagement with Burma. In one view, this means that Thai authorities tacitly acquiesce in the junta's authoritarian rule. They are thus less sympathetic to democracy proponents who seek refuge in Thailand, even though they are willing to grant them temporary refuge if they play by the rules, confine themselves to the camps, and avoid participating in activities against the military junta.

Thai authorities want to stem further flows of refugees into Thailand. They have tendered the possibility of having a "safe area" for displaced persons in the country of origin rather than on Thai soil, e.g. in Cambodia itself. This idea must be treated with circumspection as it could be manipulated to prevent asylum-seekers from leaving their country of origin to seek refuge elsewhere and thus subject them to further abuses in the country of origin.

Thai NGOs have tried to stem this drift in Thai refugee policy. At a regional conference organized by the UNHCR as a partnership in action (PARINAC) with NGOs, several conclusions pertinent to the refugee situation in Thailand were adopted:

"Participants stressed that the institution of asylum is under threat. Increasing numbers of persons in need of international protection, inter alia, due to internal armed conflicts and resulting human rights violations, are frequently subject to restrictive admission measures adopted by countries often

⁴⁰ *The Status of Refugees in Asia* op cit., pp. 193-200.

⁴¹ *Ibid.*, p. 131

faced with difficult economic situations and resulting xenophobic tendencies. Correspondingly, in some countries of the region and elsewhere refugees are not treated in accordance with basic human rights standards. Attention was drawn to the fact that some persons or groups of persons may not readily fall within the terms of the 1951 Convention refugee definition, but are nevertheless in urgent need of international protection.

Refugees and asylum-seekers in some countries of the region are subject to unduly prolonged detention and/or discriminatory measures on the basis of their membership of certain ethnic groups. The right of refugees and asylum-seekers not to be detained unduly or for long-terms and to non-discrimination was reaffirmed.

The safety of refugees, especially that of refugee women, refugee children and vulnerable groups continues to be seriously affected in many countries and remains a matter of grave concern. While refugee women and girls are often subject to sexual abuse and other forms of sexual violence, attacks on their personal security and physical integrity are not generally recognized as gross violations of their human rights.⁴²

Some of the key recommendations from this conference are relevant to the current needs of refugees. "UNHCR and NGOs should:

- a) Jointly promote the right to seek and enjoy asylum from persecution and its corollary international principle of non-refoulement.
- b) Strongly oppose so-called measures of "humane deterrence", where such practices occur.
- c) Join efforts in appealing to governments to discontinue detention and discriminatory practices against refugees and asylum-seekers and to treat refugees in their countries as favourably as other residents, especially as regards access to social services and other benefits.
- d) Vigorously oppose action contrary to or in violation of the Executive Committee's Conclusions, continuously assert the need for States to base their asylum policies on these Conclusions, as a basis for international solidarity and burden-sharing, and ensure their wide dissemination.
- e) Document and actively report on the legal and physical protection problems of refugee women and girls.
- f) Make every effort to ensure that there is adequate protection against incidents of violence to all refugees and asylum-seekers. Tripartite mechanisms including UNHCR, NGOs and host countries should be established in order to formulate concrete strategies on how to prevent these situations from arising."⁴³

Equally important, of course, is the question of prevention which is linked to the root causes in the country of origin. These causes are often due to armed conflicts, ethnic discord, repression, socio-economic deprivations and lack of participation by the civil society due to undemocratic government and governance. Unless these issues are also addressed effectively, the curative responses are likely to be too little and too late.

2.2.4 Minorities and Indigenous Peoples

The current Thai Constitution is indicative of the official mindset on the question of minorities and indigenous peoples: there is no mention of either group in the Constitution. However, in principle, all persons on Thai soil benefit from a variety of laws, such as the criminal and civil codes, without distinction.

42 Proposals of the Partnership in Action (PARINAC) Conference, Bangkok, February 1994, p. 3

43 Ibid., p. 131

The official attitude towards both communities is wary and circumspect. Officials fear that advocacy of the rights of minorities or indigenous peoples will lead to the call for self-determination resulting in secession.

There are three major minority groups: those of Chinese origin, Muslims, and hilltribes. The Chinese have been successful and wield great economic power. Precisely because they have intermarried substantially with those of Thai origin, it is difficult to identify how many Chinese still identify themselves as a distinct minority in Thailand. A recent estimate sets the figures at 6 million persons of Chinese origin.⁴⁴

A) Muslims

There are some 2.2 million Muslims in Thailand.⁴⁵ The majority live in the four southern provinces of the country adjacent to Malaysia. They are mainly rural people involved with agriculture. Their situation can be appraised from two standpoints: as a rural community and as a minority. From the angle of being a rural community, the plight of Muslims is similar to that of other rural groups in that their earnings are lower than those of urban and industrialized settings. As a minority, there are additional questions concerning their political, social, economic and cultural rights. Thai authorities fear their advocacy of the right to self-determination. There is a separatist movement in Southern Thailand which has at times been linked with violent action.

Thai authorities have identified the problems facing Muslims in Southern Thailand as follows:

a) Economic Problems

The structure of economic production is narrow and is not diversified. Main activities are in rubber plantations and fishery, the marketing for which is dependent on foreign countries. There are a large number of farmers who own no land. Sufficient agricultural land is not available, averaging only 12 rai per household. In Pattani and Narathiwat where fishery is the other main activity, the people have been increasingly impoverished as a result of diminishing aquatic lives, higher costs of production and low sale prices. The development policy will be directed towards readjusting the production structure by widening the economic base, thus enabling the economic activities of the border provinces to be more complementary and integrated into the regional and national economic structure. The problems of poverty, which affect the landless farmers, and in particular small fishermen and small rubber plantation owners, must be speedily resolved.

b) Socio-psychological Problems

The unique social structure of Pattani, Yala and Narathiwat has created problems in the management of education, family planning, and social welfare programmes. There are a great number of poverty stricken children and orphans and the government is particularly intent on promoting youth and women activities.

c) Security Problems

Existing social-psychological problems have brought about terrorist activities in various guises. The inefficiency in the administrative system, the style of governing and the poor coordination of government agencies in the area adds to the seriousness of the situation.⁴⁶

⁴⁴ *Krung Thep Torshij* 10 June 1994, p. 5 (in Thai)

⁴⁵ *Ibid*

⁴⁶ *Fifth National Economic and Social Development Plan 1982-1985* ch. 11, pp. 141-142

While the problems of Muslims in Southern Thailand qua rural folk are obvious, their problems qua minority are more convoluted. There is the initial question of whether they should be classified as a minority by the Thai authorities. A proponent of their rights summarizes the issue as follows:

*(Seen from the Muslim perspective), they are the majority in the four southern provinces while the Thais constitute a minority group. Besides, they did not come to Thailand. Historically, Thailand came to them..... Therefore, how can they conceptualize themselves as a minority in their own land? In fact, they constitute a majority in the Malay cultural world. To tell them otherwise is not convincing.*⁴⁷

History tells the tale even more poignantly. There have been several armed rebellions against the Thai authorities in the South, e.g. 1903 and 1922. The situation was aggravated by Thai nationalist policies in the 1930s and 1940s, during the government of Phibun Songkram. Dissatisfaction on the part of the Muslim groups was bolstered by the independence of Malaya in 1957. Dissident elements found an attentive ear in the new state, among those with whom they had ethnic and religious links. Thus began the separatist movement in Southern Thailand; various secessionist groups came into existence, including the National Liberation Front of Pattani, the Liberation of Republic Pattani, and the Pattani United Liberation Organization.

The grievances felt by Muslims in Southern Thailand have been caused by two major factors. First, there have been a number of overbearing administrators sent from Bangkok to administer the provinces who have caused resentment due to maladministration. Second, the Thai official policy towards all minorities, including Muslims, is assimilation in the quest for an "integrative state". Although the more stringent strands of assimilation have been relaxed in recent times, they are still evident. For instance, in the Fifth National Economic and Social Development Plan, "social development measures to implant the Thai cultural identity" including:

- a) Compulsory education will be expanded to cover all areas with special emphasis on the education of small children.
- b) Islamic studies, at all levels, will be part of the courses offered in all government education institutions. A centre for Islamic studies at Songkla University in the Pattani area will also be created to serve as a religious study centre for all levels up to the university.
- c) Harmonious religious relations will be promoted. Islamic leaders must be convinced of the importance of the Thai language and as a correct understanding of family planning.
- d) Technical knowledge to raise agricultural and industrial productivity will be imparted to the people.
- e) Private schools teaching Islamic education will be encouraged to include other academic and vocational subjects in their curricula.
- f) Educational welfare schools and orphan centres will be established to offer assistance to poor children and orphans.
- g) Youth development programmes will be given top priority in the Southern border provinces.
- h) Development of the role and activities of women in Southern border provinces will also be given top priority.⁴⁸

In law and policy, one should note that while civil law applies to most parts of the country, in the four Southern provinces of Thailand, namely Narathiwat, Satun, Yala and Pattani, a statute of 1926 provides that Islamic law applies in civil matters in relation to marriage and inheritance. For this

47 C. Satcha-Anand, *Islam and Violence: A Case Study of Violent Events in the Four Southern Provinces of Thailand*. Bangkok: Thai Khadi Institute, 1983, p.58.

48 Fifth National Economic and Social Development Plan 1982-1988, op. cit., p 143

purpose, an Islamic judge (Dato) sits with another ordinary judge, and is the final arbiter of Islamic law. There is no appeal from the decision. However, these provisions only apply where the plaintiff and defendant are both Muslims.

In reality, a variety of issues, such as land tenure, religious freedom, family customs, education and linguistic rights, have complicated practical recognition of Islamic law and its interrelationship with national and international law. These are illustrated as follows:

d) Family Matters

While Islamic law applies in regard to the family and has been recognized by the courts, administrative structure beyond the courts do not always adopt the same attitude. For instance, while the courts are willing to recognize Muslim marriages where the man has several wives as a consequence of the 1926 law, registrars of the Ministry of Interior have sometimes refused to register such marriages. The same applies for divorces and the status of children.

There is a more sensitive issue concerning the age of marriage. Under Thai civil law, it is set at 17. However, Muslims often marry before the national official minimum age. Can such marriages give rise to claims of sexual assault in breach of the criminal law? The position is unclear. At a conference held in 1982 on the issue of Islamic law, one view expressed was that those of Islamic faith in the southern provinces should wait until the age of 15 before getting married. However, the reality is often different from this.

e) Land Tenure

Muslims in Southern Thailand are affected by increasing dispossession of land due to poverty; the problem is similar to that of the non-Muslim community. One commentator notes that:

Many rural dwellers, including Muslims, have lost their title to land due to rural deprivations which necessitate the selling of their land. This is aggravated by the legal principle known as sale with the right to redemption, defined by the Civil and Commercial Code as "a contract of sale whereby the ownership of the property sold passes to the buyer subject to an agreement that the seller can redeem that property" (section 961). Due to various lacunae, the practice is that once the land is transferred to the other party, it is well-nigh impossible to regain ownership of it, and the transferrers tend to become tenants in a perpetual cycle of indebtedness to the landlord.⁴⁹

Although the issue of land affects rural folk generally, there is an anomaly affecting the Muslim community in particular:

If Islamic marriages are not registered by registrars, this gives rise to problems of the fees to be paid for transfer of land either while the transferor is living or upon his death. Generally, reductions for fees are granted for the wife and children of the transferor, but their status depends on whether they are registered by the registrar of the Ministry of Interior. If they are not officially recognized as wife and children, they have to pay full fees like any other person outside the family.⁵⁰

f) Freedom of Religion

This is recognized under the Thai Constitution, although subject to public order and security. Outwardly, there is no discrimination based on religion. However, there have been some grey areas. At one time the central authorities sought to place Buddha images in all schools, including those attended by Muslims. The Muslim community objected to this. As a compromise the state agreed not to make Buddha images compulsory at school, leaving such decisions to the discretion of school administrators.

49 V. Muntaradorn "The Aborigine in Thai Law", *Law and Anthropology*, Vol. 2 (1987), pp. 267, 271-272.

50 *Ibid.* p.272

g) Freedom of Education and Language

Access to primary education is guaranteed in the Thai Constitution, but there remains the issue whether Muslims can set up their own schools or refuse to go to state schools in preference for their own. As noted by one commentator:

In the past, many Muslims were of the view that to go to a Thai school would be a sin. This led to the setting up of schools known as Pondok in Southern Thailand, with emphasis on the local language and religious education in the Islamic faith. Since 1961, the Ministry of Education has moved against these schools by stipulating that they must be registered with the Ministry.

Officially, therefore, unregistered schools do not exist.⁵¹

Unofficially, of course, unregistered schools do exist, and some Muslims may feel that there should be no need to register these schools.

There have been some compromises. While in the past, the nationalistic and integrative policy sought to compel all Muslims in Thailand to adopt the Thai language, there has been a move towards linguistic pluralism. Courses in not only Thai but also Yawi—the local language of Southern Muslims—are now available. Textbooks in Yawi have also been produced with the help of Muslim communities.

h) Name and Dress

Many Muslims in Thailand have two names; one in Thai and one in Arabic. At one time, there was a problem when they tried to register the Arabic rather than Thai names with administrative authorities. Arabic registration is now permitted. But there remains a problem whether women and girls can wear the covered, cultural dress to school. Private schools have allowed this, but state schools have not allowed this.

i) Political Participation

Muslims enjoy the right to vote as do other Thais. There are currently several Muslim MPs and Ministers. Will more decentralization benefit the Muslim community? As the present decentralization process is blocked, Muslims suffer from the excessive centralization process that has plagued Thailand for decades. How far the political participation of Muslims can be stretched in the southern part of Thailand remains uncertain; Thai authorities do not talk in terms of autonomy and shun the issue of self-determination. In 1993-94, some MPs proposed reforms to the religious leadership of the Muslim community by promoting more elections of religious leaders for shorter terms. This was opposed by the Muslim community and the proposal has been shelved.

In sum, it is not so much the law that is amiss but executive attitudes and practice towards Muslims. Maladministration has been a major cause of dissatisfaction in Southern Thailand. Muslims have suffered in two capacities - as rural people and as a distinct ethnic group. Remedies must improve the administrative system, promote more local participation in decision-making, address poverty, and socio-cultural and political aspirations.

B) Hilltribe communities

The official attitude towards hilltribe communities in Thailand has been to classify them as a minority, but some external circles have also classified them as indigenous peoples. The National Statistical Office estimates are some 554,000 persons from hilltribe communities, mainly in Northern Thailand.⁵² Like Muslims, state policy has been one of assimilation in the Thai integrative state. The Fifth National Plan identified problems facing hilltribe springing from a high birthrate (4.3% per annum), poppy cultivation, and socio-economic and environmental issues.

51 S Pitsuwon, *Islam and Malay Nationalism*, Bangkok: Thai Khadi Institute, 1995, p. 195.

52 Source: 1985-1988 Census, National Statistical Office, Bangkok.

Most hilltribe people base their livelihood on subsistence agriculture. Cash income is very modest, and averages 3,500-10,000 baht per family a year. Cash income is often derived from growing poppy. Most hilltribe people rely on shifting cultivation due to the lack of knowledge of production techniques in agriculture. But this type of agricultural practice also destroys natural resources and has created environmental problems.

Poor health among hilltribes is a major problem inhibiting development. This has been attributable to unhealthy sanitary conditions, the lack of doctors, and an inadequate knowledge of good health and nutritional practices. There is also a traditional belief among the hilltribes in the utilization of opium as medicine which has caused opium addiction among hilltribes. Also, the treatment of diseases is usually provided by the village doctor.

The illiteracy rate among hilltribes is as high as 88% (on average) owing to the lack of awareness and realization of the values of education and inadequate education services provided by the Government to the hilltribes.

Shifting cultivation and encroachment of forest areas for cultivation have brought about the destruction of watershed areas. The depletion of forest areas has been partly brought about by the encroachments into the forest land for cultivation by hilltribes. According to the satellite census during 1973-1977, the forest lands in the Northern region were reduced from 95,842 square kilometres to 68,588 square kilometres during this period, or almost six per cent annually.

To date those hilltribe villages which have not been organized in accordance with the Administrative Act, still account for about 70% of the total. It is estimated also that approximately 1,000 hilltribe villages are still not under the jurisdiction of any government agency since they are located in remote areas and are thus vulnerable to infiltration and subversion.

Favourable topographical conditions have meant that poppy cultivation is much practiced in the highlands of the Northern region. The survey undertaken during 1975-1976 indicated that the area under poppy cultivation totalled approximately 60,000 rai with an average yield of 571 grammes per rai. The marketing price of opium in hilltribe villages in 1980 was 15 baht per gramme, hence poppy is a popular cash crop. With the rising price of opium, hilltribesmen in certain villages who had stopped growing poppy earlier are now cultivating it once again using more modern technology cultivation in the light of an increasing land constraint.

Land problems in hilltribe communities hinge on misuse and soil erosion, and depleted soil productivity. Despite the plethora of government agencies operating in the hilltribe areas they operate without a coordinated overall master plan. The government has, nevertheless, targeted the following measures for the hilltribes:

- reduction of the birthrate to 1.5% per annum
- grant Thai nationality to hilltribe people
- accelerate reforestation
- promote more development projects

Interestingly, nothing is said concerning preservation of the languages and culture of the hilltribes. The official trend has been to view hilltribes as underdeveloped and to advocate assimilation into the Thai system. The state has paid much less attention to enhancing and preserving the positive side of hilltribe culture, including their languages.

In sum, the official attitude towards indigenous peoples is either to avoid the issue or to classify the Thai community as indigenous to Thailand. There has thus been no official recognition of hilltribe or other communities as "indigenous". Their status remains a conundrum for anthropologists and human rights advocates for the following reasons:

It is uncertain when the Thais (Tais) as a race came to Thailand. According to the traditional view of Thai history as taught at school, the position is that the Thais drifted down from the Yunnan area of China in the 13th century. However, this has been questioned increasingly in recent years: the latter school suggests that the Thais have always been in Thailand. Who then can be considered as an aborigine (indigenous) in Thailand?

If the former view is accepted, there is evidence to indicate that there were other peoples before the Thais. These included the Khmers and Mons in the central parts of Thailand. To the south, there was a Muslim population and a Negrito group known as the Sagai for many thousands of years before the arrival of the Thais. However, if the latter view is accepted, the demarcation line between aborigines and new arrivals becomes tenuous. There is thus a controversy as to "who was here first?", a debate not likely to be fostered by a government when it is plagued with problems of minorities.⁵³

2.3 SECURITY OF THE PERSON

The repression of May 1992, in which at least 48 people lost their lives and over a hundred were injured, was a spectacular demonstration of the impact of the right to security on democratic life. Peaceful protesters were attacked by the military in a savage manner. An important issue which arises therefore is: how secure are Thais against a repetition of this kind of repression?

Obviously, this kind of broad question is impossible to answer categorically. But a number of more specific questions arise out of it. How have those military commanders involved in the May "incident" been dealt with? Does that treatment amount to impunity? Why has the Defence Ministry's report on the May event not been made public? Will the report end up being lost or shelved, as has frequently been the case with similar enquiries in the past? If this is so, and if no clear attribution of responsibility and punishment ensue, is this going to satisfy the Thai public, or is there still a psychic need for a national accounting and punishment of those in command? If not, is the absence of this need something which will facilitate a recurrence?

But beyond the issue of May 1992, there have been political killings in Thailand in past decades. For instance, in the 1970s, the newly formed Farmers' Federation of Thailand, centred in the North, was effectively disbanded by a series of unexplained killings, which took the lives of 35 of its leaders. Everyone suspects police involvement in these. Again, in five years in the 1980s, 47 journalists who were involved in investigative reporting were murdered.⁵⁴

In fact, the habit of getting rid of trouble-makers in this way extends beyond the political realm. It can happen that people who resist powerful business interests, or local strong men, may be given the same treatment.

The following story is reported by Akin Rabibhadana: "When we were doing research for the Land Reform Office in Phetchabun Province, we found that in a large number of villages a few men had similar tattoos on the front of their necks. Upon enquiry, we were told that these men must not kill each other, and that a businessman in town brought all of them to a wat in Bangkok to be tattooed in this manner. The area, Pa Wang Kamphang, was primarily involved in maize growing, and this businessman was the sole buyer of the produce. By controlling the sale of tractors, he and his followers, the tattooed men, plough the land for the villagers. Agricultural inputs, seeds, fertilizers, and insecticides are provided by him in advance with the condition that all produce must be sold to him alone. Anyone who would do otherwise had to leave the area or get killed. Murders were frequent

53 "The Aborigine in Thai Law", *op. cit.*, p. 267.

54 See Elliott Kulick and Dick Wilson, *Thailand's Wars*, New York: Saint Martin's Press, 1992, p. 48.

in the area at that time. The businessman was a provincial council member, and occupied a prominent position in the organized provincial village scouts. It was said that even the BAAC (State agency giving agricultural credit) dared not give credits in the area."⁵⁵

In short, there has been in Thai society a serious lack of security for dissidents and critics of many kinds; either because the apparatus of law enforcement does not extend its protection (against local strong men, for instance), or because this apparatus is itself involved in repression.

In regard to the police, a parallel point can be made about the torture or beating of people in detention. There is evidence that it happens, but there is very little recourse.

It sometimes happens that the relatives of a victim of beating or killing files a suit against the police. Some of these have been settled out of court with compensation to the family. But ordinary judicial recourse is usually fruitless or unavailable.

In the current phase, officially-sponsored killing seems to be less in evidence. But there are no adequate guarantees against its recurrence. How to come to grips with this?

This irresponsibility of military and police enforcing agencies has been facilitated by lack of Parliamentary control, either because Parliaments have not been in existence, or because they have not been allowed to know what is going on. An indispensable condition of any progress in this area is full parliamentary control over all enforcement agencies. This shows the crucial importance of the issues of accountability and transparency, which will be discussed in the next Section.

Such accountability would mean (a) full access to information on the part of the relevant ministers, (b) the right of Parliament to demand an enquiry in dubious cases, and (c) public disclosure of the results of such enquiries, so that the agencies will also be responsible, through Parliament, to public opinion. Clearly, there will continue to be severe restrictions on democratic challenges to power in Thailand as long as this situation is not dealt with.

This will not be easy to achieve in the Thai context. To put it mildly, enforcing agencies there are not used to having their action supervised. This is doubly difficult in the case of the armed forces, who have a very special status even when they are not governing the country, and enjoy an enclave of power whose extent is very unusual in world terms. One of their privileges is precisely a "special" fund for security purposes, for which they do not have to account.

Establishing an acceptable level of security of the person will involve coming to grips with the whole issue of the place of the armed forces in the Thai state. This will be discussed in Section III.4.

In the meantime, in order to provide some sense of the present situation, we reproduce, in the remainder of this section, some paragraphs from the 1993 US State Department Report on Human Rights in Thailand ⁵⁶.

2.3.1 Political and Other Extrajudicial Killing

There is no credible evidence that criminal suspects are systematically or regularly targeted for violence. However, there continued to be credible reports by legal organizations, reputable non-governmental organizations (NGOs), and the press that police summarily executed criminal suspects, particularly in areas outside the capital. Reliable NGO sources who have access to court records report that over 60 deaths occurred either during arrest or while in police custody in 1992. These figures represent only the 34 district courts (of a total of 95) that reported their 1992 statistics. It is difficult to determine what percentage of police homicides were justified. NGO legal advocacy groups pursued legal action against the police in approximately 15 per cent of the cases in 1993. Official government statistics on the number of criminals and suspects killed by police in 1993 were unavailable.

⁵⁵ Akin Rabibhadana, *op. cit.*, p. 24

⁵⁶ *Country Reports on Human Rights Practices for 1993- Thailand*. Report Submitted to the Committee on Foreign Relations US Senate and the Committee on Foreign Affairs US House of Representatives by the Department of State

For example, on August 7, five police officers from Ban Pong district, Ratchaburi province, were accused of killing a vegetable exporter who ran a traffic light. The Ministry of Interior (MOI) agreed to conduct an autopsy and initiate an investigation into the incident. Relatives of the vegetable vendor have retained an attorney to help track progress of the MOI investigation, which was still in progress at year's end.

Although in the past there have been reports that police killed detainees to keep them from reporting abuse to authorities, there were no such cases reported in 1993. However, police beat to death a demonstrator during protests against falling rice prices. (See section 2.b.)

Convictions of police in summary execution cases are rare, as evidence is often lacking due to witnesses reportedly being intimidated or paid not to testify. The law allows personal suits against police officers for criminal actions taken while making an arrest. However, due to flaws in the legal process and ingrained cultural attitudes, victims or their families rarely file suits against the police. During the initial police inquiry, most police investigations routinely determine that no wrongful action was taken on the part of the police; judges generally follow the prosecutor's recommendations. In cases of police homicide, the blood relative of the deceased has the legal right to sue. If pursued by the family, the case is handled by the same office, in some instances by the same prosecutor, who has already ruled that no wrongful death occurred. Reliable law advocacy organizations know of four cases that were filed against the police for homicide in 1992. There is no information to determine how many cases are settled out of court, but in cases where suits are filed, the family of the deceased often receives compensation from the Government and the suit is dropped.

In August the Pattani United Liberation Organization (PULO) Muslim separatist group was blamed for an attack on a train that resulted in one death. In August and September a wave of violence erupted in southern Thailand, resulting in the deaths of several soldiers and one civilian. Muslims and particularly PULO were blamed for the violence, but as of September, the Government had not produced any evidence to link PULO to the violence.

2.3.2 Disappearance

There were no new cases of disappearance in 1993. After months of debate, NGOs, the MOI, and police officials agreed to a list of approximately 48 "missing" protesters following the military's violent suppression of prodemocracy protesters in May 1992. Local investigations into their whereabouts continue, and many family members and NGOs suspect the majority are dead. An amnesty decree, reaffirmed in November 1992 by the new administration, effectively protects military leaders and protesters accused of criminal activities during the May events from criminal prosecution. In response to the decree, NGOs and the relatives of the missing filed a civil suit against three of the top military leaders involved in the May violence. At year's end, the court had postponed the preliminary hearing on the suit while it considered a petition by the plaintiffs that they be allowed to sue in form pauperis.

Also in response to the May 1992 violence, legislation was passed in July requiring full Cabinet approval before military force can be used to quell civil disturbances. There was no progress in the cases of eight Cambodian criminal suspects who disappeared after being turned over to Thai police in April 1992. With the closure of all Cambodian displaced person camps earlier this year and the repatriation of all displaced Khmer to Cambodia, the Government appears to have dropped this case.

No instances of disappearance at the camps for displaced persons along the Thai borders were reported. On March 2, the MOI charged a police lieutenant colonel with the kidnapping in February 1990 of a Saudi Arabian businessman suspected of involvement in the 1989 murder of

Saudi Arabian diplomats in Bangkok, but in September the charges were dropped. The businessman and two other Thai suspects have been missing since 1990 and family members believe they are dead. The families of the two Thai suspects claim that police repeatedly harassed the men and eventually detained them to try to elicit a confession. The police have no official record of arrests or release of any of the three involved, but all were last seen in police custody.

One lingering disappearance case that began in 1991, that of Labor Congress of Thailand (LCT) President Thanong Po-An, remained unresolved at year's end. The LCT continued to press the current administration to make a more serious attempt to locate Thanong. A government-appointed committee reported in August that it had no additional evidence to determine the fate of Thanong. It is widely believed that Thanong was kidnapped and killed because of his criticism of the military regime that took over the country in February 1991.

2.3.3 Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

Although Thailand's Criminal Code forbids cruel, inhuman, or degrading treatment or punishment, there continued to be credible reports of police beatings of prisoners and criminal suspects. Security forces do not use systematic physical abuse or violence to target any particular group. However, criminal suspects regularly complain of police attempts to secure confessions or evidence through the use of torture such as electric shocks.

In general, access to prisoners is not restricted. The foreign prison population regularly receives visitors, and there are scheduled visiting times for both Thai and foreign prisoners. Solitary confinement is sometimes used to punish difficult prisoners.

Conditions in most prisons do not, in general, threaten the life or health of inmates. However, there have been continuing unsubstantiated reports of sporadic physical abuse of both Thai and foreign prisoners by prison guards in response to disciplinary problems. International observers have commented that conditions at the Suan Phlu immigration detention center are so bad as to constitute cruel and unusual punishment, noting extreme overcrowding and lack of medical care. Immigration detention facilities are not administered by the Department of Corrections and are not subject to many of the regulations found in the regular prison system, such as those mandating exercise and medical care or limiting length of detention. Detainees are therefore held for extended periods without being allowed to leave their cells or exercise and may be incarcerated for an indefinite period of time. Thai immigration law requires that prosecutors formally charge detainees in court within 91 days of their detainment. However, some detainees unable to put up bail or pay deportation costs, or detainees whose countries refuse to readmit them, can and have been held longer.

2.3.4 Arbitrary Arrest, Detention, or Exile

Thailand's Criminal and Penal Codes are based largely on Western European models. Except in cases of crimes in progress, arrest warrants are generally required. Specific charges must be brought against detainees within 48 hours, but police have the authority to extend the detention period to 7 days if required to complete an investigation. Detainees do not have the right to have their lawyers present during questioning.

There is a functioning bail system, but it is also evident that judges have considerable discretion in determining eligibility for bail. In a recent prominent case of an alleged plot to assassinate the President of the Supreme Court, the presiding judge denied bail to two of four co-defendants, releasing the others (including the alleged mastermind) on bail. The only legal basis for detention without specific charges for long periods (up to 480 days) is the Anti-Communist Activities Act.

II. THE DIMENSIONS OF DEMOCRATIC DEVELOPMENT

No one has been detained under the act's provisions since 1984. Nevertheless, some detainees at the Suan Phlu immigration detention center reportedly have been held as long as a year. In response to the amnesty decree, all remaining detainees arrested during the May 1992 events were released from police custody and charges were dropped.

Of the approximately 50,000 inmates in Thailand, it is impossible to ascertain what percentage are pretrial detainees. Prison officials do not maintain statistics on sentencing and detention and pretrial detainees are not segregated from the general prison population. —

Roads to Democracy in Thailand

3.1 STRENGTH AND WEAKNESS OF THAI DEMOCRACY

So what keeps constitutional democracy on the agenda in Thailand, in spite of the setbacks it has experienced in the past decades? This question arises implicitly out of our discussion in the Introduction to this report. It is time to return to it here.

The main thrust has always come from new elite groups, formed by the process of development. First, the civil servants and army officers, some from non-noble background, the creation of the reforms in the Fifth and Sixth Reigns, from whom sprang the "Promoters" of the coup of 1932; next, the class of indigenous business people who began to take on a larger role after the Second World War in what had been before a Chinese-dominated private sector; more recently, the larger middle class which has been called into existence by the growing requirements of the Thai economy for professional and technical personnel; most recent of all, the host of NGOs involved and concerned with issues of economic development, democracy and rights, and which grew with particular rapidity in the 1980s.¹

At every stage, the growth of a new stratum has led to a demand that new people be included in the process of government. Sometimes this has been possible on the old model of patron-client. Chinese business people were so integrated in the past in subordination to former ruling strata. But for the most part, this traditional mode of integration has not sufficed; the demand has come from a wider group for a real say in governance, rather than an expanded client's niche.

Two developments drive this trend. The first is the sheer numbers of the new group at each stage, which as they grow, make them harder to integrate in the old way. The second is the prestige of modern, internationally recognized notions of legitimacy. We can see these operating at three levels.

¹ William A. Callahan in *Imagining Democracy: Reading the Events of May in Thailand* (forthcoming) has discussed the significance of this new NGO community for Thai politics.

First, they offer standards of efficiency and "rational" administration, which impugn the more clique-ridden, corruption-prone ways of functioning which have been endemic to Thai administrations in the past. Second, democratic constitutionalism itself has a very high prestige internationally today, as mentioned above. But thirdly, in a more subtle way, the culture of modernity and of the direct-access state, brings along with it new understandings of dignity. The dignity of the free agent in modernity is more and more seen as inseparable from that of the equal citizen. According to this understanding, the place of a client in a clique structure is unsatisfactory and demeaning. The spread of these images of dignity push towards adopting at least the forms of democratic constitutionalism.

The weakness of this drive is the obverse side of what has just been described: that (with the exception of some NGOs primarily concerned with decentralizing power) it seems to have been primarily an elite phenomenon: more a middle class than a popular aspiration; more prominent in cities than countryside; and above all, heavily centred in Bangkok.²

This has meant, on one hand, that the elite groups themselves have sometimes been afraid of disorder, and of "dangerous" demands that might be made by popular groups. So that the very strata pressing for democracy have on occasion been open to recruitment by ruling groups in a move to suppress democracy, as seems to have occurred in 1976.

More significantly, it has meant that, even where the middle class is pressing for more democracy, they often lack broad support in the society as a whole. The aspiration for democracy lacks social depth, and is thus vulnerable.

The imbalance has meant that the countryside has had relatively little clout in recent Thai history. For a long time its development was neglected by governments, who concentrated on industry and infrastructure, rather than being concerned with agriculture. There was nevertheless a very rapid development powered by the export of rice, particularly in the Central, and part of the Northern regions. After the removal of traditional dues and *corvée*, Thai peasants were in the fortunate position of owning their land. They responded to the forced opening of trade after the Bowring treaty of 1855 by stepping up rice production for export. More land was brought under cultivation, forests were felled, and the demands on water were ever increased (rice cultivation needs a lot of water), all of which has prepared a very difficult ecological situation for today's generation.

But for the first decades, this development took place largely without government support, either in fostering new methods, or in relevant infrastructure, like large-scale irrigation. The government even made substantial revenue off the peasants (indirectly) through a tax on rice exports. There has been greater government help in recent decades, but the countryside still lacks clout. Government tends to go in for mega-projects without much consultation, and the highly centralized Thai administrative structure allows for little local initiative. It is not surprising that there is still a big gap between urban and rural living standards, and an even bigger gap between Bangkok and regional standards.

Economic development has meanwhile not helped very much to foster political mobilization among peasants. The connection to the international market has opened new doors. In a sense, it loosened the dependence on the powerful and unresponsive central administration. But the way the market penetrated the village, through middlemen, was itself rather like the patron-client relation of tradition. It did not lead to the kind of lateral associations which are the basis of common democratic action.

2 Bangkok is a real "primate city", dwarfing all other urban centres. It has currently about 8.9 million inhabitants, totally dwarfing Chiang Mai, the next largest city. The population ratio between Bangkok and Chiang Mai was 11.1 in 1900, 35.1 in 1960, and 55.1 in 1990. (Source: Paritsa Chulaporn, *Bangkok, Synthesis Report* volume II for the 1993 TDRI year-end conference). Bangkok is also much wealthier than the rest of the country. The people of Bangkok have more than two and a half times the average income for Thailand as a whole (John Gitting, *Op. cit.* p. 87). The gap is closer than 4 to 1 between Bangkok and the poorest region, the North-East. See also Table 1 of Section I A.

The Thai traditional village itself has a strong solidarity, which could be the basis of common action at this level. But in the parts of the country which have been most touched by the international market, this solidarity is fraying. Inequalities in holdings are increasing, the number of landless is growing.³ Agribusiness is expanding in certain areas. And the unity of the village as a ritual community is weakening.

In short, Thai democracy is weak because insufficiently supported by the countryside, where over half the population still lives.⁴ And the countryside is relatively neglected by Thai governments, democratic or not. There is a vicious circle here, which needs to be broken.

This underpins another "vicious circle", a loop in which Thai politics appeared to be caught,⁵ in which periods of parliamentary rule were interrupted by coups, which after an interlude of oligarchical rule led to the promulgation of a new constitution, inaugurating a new period of regular parliamentary rule. This oscillation reflected the underlying situation we have been trying to describe. On one hand, democracy was too powerful - both internationally and among part of the Thai elite - just to be set aside in favour of outright authoritarian rule. Sarit in a sense tried this formula, and showed up its inherent limitations. Put in other terms, the armed forces (or army together with bureaucracy) do not have of themselves the legitimacy they would need to carry this off. They have to "borrow" some, either from the monarchy (as Sarit tried), or from some variant of the Buddhist Dharma, or from a representative assembly.⁶

But on the other side, the support for democratic constitutionalism has always been too shallow to guarantee it against overturn by the military. The result has been that up until now Thai society has been unable either to live fully with democracy, or fully without it. Even attempts to enshrine a kind of half-way house, what Chai-Anan Samudavanija has called a "semi-democratic" system,⁷ have not been ultimately sustainable. This was Chai-Anan's name for the chastened and controlled parliamentary regime of the 1980s, but it too was upset by the 1991 coup, and its aftermath. In fact, this regime satisfied neither of the major forces.

This aftermath has indeed seen a return in force to democratic rule. Does this offer hope that the vicious circle may be behind us?

3.2 THE CURRENT SITUATION

Thai democracy is in a phase of upsurge. The aftermath of the repression of May 1992, the resistance to it, and revulsion from it, has produced a new climate, reminiscent in some ways of the period after 1973, when a similar overturn occurred. The parallel with 1973 is in a way not encouraging, when we remember the aftermath of 1976. But there is some hope that Thailand may

3 Tenancy, as against ownership of land cultivated, is a possible index of landlessness. It has grown sharply where commercial activity has been high: the Central Plains, particularly around Bangkok, and parts of the North. It has been estimated (around 1980) that tenancy was as high as 75-85% in the area immediately around Bangkok; and between 25 and 50% in other areas of high commercial activity. (Source: Charles F. Keyes, *Thailand: Buddhist Kingdom as Modern Nation-State*, Bangkok: Editions Duang Kamol, 1989, pp. 164-5).

4 In 1980, agricultural households as a percentage of total households still accounted for 55.6%. Of course, many of these households might have members temporarily or permanently working in Bangkok, or some other city. (Source: Wyatt, *Op. cit.*, p. 293).

5 For "the vicious circle of Thai politics", see Prudhisan Jumbala, *Nation-Building and Democratization in Thailand: A Political History*, Bangkok: Chulalongkorn University Social Research Institute, 1992, pp. 24-5. Prudhisan is quoting Chai-Anan Samudavanija, who originated the phrase, which now has wide currency.

6 See Prudhisan, *Op. cit.*, p. 23.

7 Chai-Anan Samudavanija, "Thailand: A Stable Semi-Democracy", in Larry Diamond, Juan J. Linz and Seymour Martin Lipset, eds., *Democracy in Developing Countries* vol. 3 Asia, Boulder, Colorado: Lynne Rienner Publishers, 1989(?)

not revert again to the swings and roundabouts of on-again, off-again constitutions, elected assemblies, punctuated by coups. This is because the factors mentioned above which have been working for democracy are stronger and solidier than ever before.

The most important of these has been the slow growth of an elite "civil society", first among civil servants, then later in a growing business community (and in a growing assemblage of issue-driven, Bangkok-based NGOs). What is encouraging is that:

- a) this elite is now larger than ever before, with the accretion of broad new educated strata of professionals and technical personnel. Moreover, it seems less exclusively concentrated in Bangkok than in the past. The reactions to May 1992 in certain provincial towns show that it has greater outreach.
- b) the outlook of this elite is less and less tolerant of interruptions to the representative-institutional order which has been set up, which the army periodically permitted itself. (This attachment to the present order may not be unequivocally good news when it comes to attempts to extend and deepen democracy, since the order is connected at present to an invasive centralized bureaucracy, and wedded to elite models of development.) The lesser tolerance of coups is based on a number of things, but the growing size and hence confidence of the middle class, and an increased sensitivity to international opinion, are probably two important factors.
- c) there also seems to be a growing realization among all involved, including army personnel, that economic development has reached a point here at which tight control from the centre, particularly by people who are not equipped to manage enterprises, is getting counter-productive. Not to speak of the economically negative effects of political instability, and international disapproval on the part of the richest and most powerful economies, which are today for the most part stable democracies.

All this seems to offer hope for a prolongation of the present democratic-representative government, and for the stability of this regime. But only if the momentum can be maintained. This means two things: it means widening and deepening democratic participation, beyond the middle class in the cities, and especially to the countryside. But it also means strengthening the elite, "middle class" democracy which exists and rendering it more secure. These two goals have to be pursued together, and above all, not pitted against each other. For instance, modes of mobilization in the countryside which were perceived as threatening to the middle class in Bangkok might just turn these latter into supporters of authoritarian rule, as seems to have happened in the 1970s. By the same token, programmes for "development" of the countryside which largely reflect certain business interests in Bangkok might simply increase the sense of powerlessness to affect the over-all shape of things (though not as we shall see below, to make punctual gains) from which rural people already suffer. Somehow national representative institutions and grass-roots participation have to be brought into synergy (which in one way or another is the agenda of all democracies today).

What is at stake here may be the stability and survival of constitutional rule. But this is not the only issue. Even if Thai society could somehow be guaranteed against another coup by self-appointed Juntas, the question still remains of how the system functions. Chai-Anan's description of the system of the 1980s as "semi-democratic" captures what is to be feared here: a bureaucracy and army only partly under parliamentary control, capable of setting limits to its power, even cowing it into acquiescence in certain circumstances. The most insidious use of the coup option can be consistent with this option's never being exercised.

Now the needed synergy is sorely missing, because as Scott Christensen and Ammar Siamwalla argue,⁸ there are two rather different democratic dynamics in operation in Thailand today. One is

8 Scott R. Christensen and Ammar Siamwalla, *Beyond Patronage: Tasks for the Thai State* (Policy Analysis Paper of the TDRI, December 1993). I have drawn a great deal on the very interesting analysis of this paper.

that which is more and more taking hold among urban elites. The other is dominant in the countryside. (And there are, of course, a whole lot of contexts in which they overlap.)

The growth of elite-urban civil society has given more weight to a politics of issues. One of the most important factors in this growth has been the striking rise in the last 20 years of NGOs, many of them issue-oriented, concerned with such things as ecological issues, decentralized planning, poverty, village welfare, gender equality, and human rights generally. Complementing this has been a developing press, more and more capable and willing to raise issues and keep them before the public.

There are, however, certain important limitations to the free flow of information and ideas in the media. The press is largely independent, but the electronic media are still entirely state controlled (although hearings are now being held to grant licences for two new TV stations). They are shared between the Ministry of Defense, the Public Relations Department, and the Mass Communication Organization of Thailand, with the army having the lion's share. They are franchised to private companies, but the blanket of silence by the electronic media on the repression of May 1992 shows that media control can be a grim reality.

The May incidents also showed the limitations of this kind of control in today's conditions of globalization. There were enough people with access to satellite dishes, partly through international hotels, to allow the flow of information to get out to the public about the bloody events in Bangkok. The attempt to hide the facts just provoked a bigger public backlash against the army.

This is also the place to mention another important limitation on Thai urban civil society: the relative weakness of popular organizations, and particular trade unions. Less than 5% of the labour force is unionized. Under the recent Anand government, public sector unions, in some ways the strongest component of the movement, were derecognized. (See Appendix on Trade Unions in Thailand).

The reasons for this very slow growth in trade unionism are varied, but one of the most important is the nature of the Thai working class. Many workers are recent entrants from the countryside, and moreover, they often have a view of themselves as temporary urban migrants. This is, of course, often an illusion, as we see from similar situations elsewhere. Many of these "temporary" migrants will in fact stay for life. But there is a substantial seasonal migration during the dry season, when people are not needed on the farm. This dry season migration can expand Bangkok's population by as much as 10%.⁹ These low rates of organization persist in face of what are frequently appalling working conditions, with very high rates of industrial accidents.¹⁰

But for all its limitations, Thai civil society is growing in size and confidence, and putting issues on the agenda which it expects to be dealt with by the political system. Moreover, in the present climate this political system is no longer seen as a self-legitimizing bureaucracy which might take guidance from an enlightened public opinion, but very much as a parliamentary democracy. Things are supposed to be decided by public discussions and votes, culminating in a government with a parliamentary majority carrying out its programme.

Now the Thai "bureaucratic polity" is not equipped to function in this way. For a century, it has functioned without responsibility to anyone outside it, save at the summit: to a king, or a strong military leader. It has, of course, developed lateral relations of another kind with society, establishing particularist "entourages", or patron-client relations, e.g., between high army officers, civil servants, and businessmen in the post-war period. In other words, it has its own way of gaining support from and giving favours to outsiders. But this is antithetical to the way a civil service relates to the surrounding political system in standard, issue-oriented democracy. Instead of trading favours for

9 Mark Asiew. *The Making of Modern Bangkok*. TDR background report, December 1993, p. 28

10 Akon Rabinradane. *Social Inequality: A Source of Conflict in the Future?* Synthesis Reports, vol IV, TDR conference, December 1993, pp. 31-4

support to individuals and groups, standard democracy requires that the civil service implement impartially and across the board a general policy decision, arrived at by duly elected authority.

But the Thai bureaucracy has big problems with this. It is not just that the existence of clans and corruption make it hard to deliver on the impartiality dimension. More seriously, Thai bureaucracy seems to be a model of non-transparency and multiple overlapping tracks of implementation. Different ministries will have departments dealing with the same issues and programmes. And this will be further duplicated by a special agency in the Prime Minister's Office, of which there are a stupendous number. In addition, the traditions of Thai administrative law militate against any clarity in this regard. The usual practice is to write legislation in very general terms, leaving it to the various agencies to make detailed regulations. But the agencies are multiple and engaged frequently in a tug of war. So that the upshot of the best-intentioned legislation cannot be predicted. And to make things worse, it is frequently not at all clear afterwards who is accountable for a zero or perverse result. Important pieces of legislation, like the Land Rent Act of 1975, intended to deal with the growing resort to tenancy by land-hungry peasants in the Central Region, remain dead letters in some regions.

This mode of operation, in which departments and agencies engage in endless rivalries never finally resolvable, in which the whole institution tends easily to slide towards various forms of rent-seeking, bespeaks a bureaucratic world which is used to ruling, which does not have to answer to an outside will. Of course, all bureaucracies tend to develop somewhat in this way, but there are degrees, and the Thai case shows that this question of degree can be important.

In a sense, the Thai bureaucracy is paying the price of earlier success. As a top-down operation, they did achieve early successes: a national education system, transport system, electricity grid, macro-economic climate propitious for take off into the ranks of the NIC. But these are the tasks that lead themselves to such command structures, in this way analogous to the successes of early Stalinism (although of course, there is no comparison with the brutality of that tyranny). But now that new tasks arise which require a management sensitive to feed-back (such as managing natural resources in an era of scarcity), the Thai state is very much out of its depth. It has to learn to let go. But that lesson runs against its historic sense of mission, and its understanding of its role in society.

There is thus a big obstacle in the way of democratic development, which threatens to be the source of much conflict. A civil society, mainly urban and middle class, is beginning to feel the need for and interest in issue-oriented democracy, trying to bring about change through elected governments and parliaments, which are themselves not really capable of controlling the state. Once again, we are all to some extent in this predicament, and people in what are superficially more "successful" democracies often grumble at the inertia and opacity of the state and frequently complain that our discussions of issues get side-tracked and have no effect. But here again, we have to remind ourselves that there is a question of scale here, and the Thai case goes well beyond what most Northern electorates are used to. The attempt to change founders all too easily on the impermeability, the non-transparency, the lack of accountability of the Thai bureaucratic polity.

Here, again, the problem is not so much the danger of a coup, but the permanent structures of a "semi-democracy", relatively impervious to democratically made decisions. Elite civil society and the political system are potentially on a collision course. And the frustration and disillusionment may have serious consequences.

This is one dynamic in Thai democratic politics. There is another, which relates the great majority of country-dwellers to the system. Unfortunately, this second dynamic does nothing to relieve the tensions described in the first.

The shape of electoral democracy in the countryside has a lot to do with the way that both state and market have penetrated the villages in Thailand, opening out what were earlier largely self-enclosed

communities. This opening has not been one that facilitated the kind of lateral mobilization which could lead to the creation of a "civil society", which could in turn exercise influence and eventually leverage on the political system.

On the contrary. The state for its part has maintained tight control over its development programmes. The people it deals with at the village and commune ¹¹ levels, the phuuyaibaen (village chief), and the kamnan (abian head), are indeed elected. One would normally think that this would tend to make them the spokespeople of their constituents over and against government officials. This is, indeed, to some extent the case; but the preponderant effect seems to be the other way around, viz., that these leaders become more the agents of the bureaucracy in village and commune.

One reason for this is that budgets are basically controlled by officials. In order to benefit from programmes, kamnan and phuuyaibaen have to show a co-operative spirit. They have to recruit people for various schemes of army and civil bureaucracy, even those which no-one sees any use in, in order to be in good standing when it comes to other, more essential programmes.¹²

This reversal of the normal direction of flow for elected officials is facilitated by the traditional hierarchical status which the "king's servants" (karachagaan) enjoyed, and often continue to enjoy, among peasants.

But this separation of leader from constituency is often aggravated by another development. Not only the state but also the market has penetrated the village. Normally, one might hope that the second might offset the power of the first. But in general the market too, has come in a form which disempowers the group. It came first in the shape of middlemen who bought the main crop, rice, for export. Something like the patron-client relation was recreated in the economic sphere.

Here one could hope that competition might undercut this power relation. But in the meantime, something else has happened. Successful commercial farming has become a more expensive proposition, requiring higher cost inputs. Land is scarce; new cash crops (corn, cassava, sugar) require expensive fertilizers and use of tractors; in addition, some of the new marginal uplands are unsuitable for the staple, rice, and force their owners into these high-inputs crops.

The consequence of all this for certain regions has been a pattern of debt, of loss of control, even of loss of land, by poorer farmers, and a concentration of wealth among a richer minority of villagers. These are the people who have the clout to get themselves chosen kamnan and phuuyaibaen by constituents who are often in their debt, or otherwise depend on them. (And they're the ones who can afford the expense involved in the office.)

This is, of course, not a universal pattern. It is more marked where economic development and market penetration has been greater, viz., in the Central Region, and some parts of the North; it is less marked in the poorer Northeast. But where it happens, it tends to drive a double rift between elected leaders and their constituents. These leaders become more agents of the state; and they cease to share the same fundamental interests as those they represent. It can thus come about that they further projects and modes of development which thwart the good of the majority.

Naturally, this pattern is a potentially severe obstacle to democratic participation. One way in which people could have impact on the political system is through community action at the village level. But where the village becomes polarized between better- and worse-off, this kind of solidarity is weakened. At the same time, the double alienation of village and commune leadership means that peasants tend to relate to the national electoral process in a manner which is very far removed from our normal understanding of issue-oriented democracy.

¹¹ A is a group of villages. It is a sub-unit of a district, which in turn is an administrative division of a province.

¹² See Philip Hirsch: *Development Dilemmas in rural Thailand*. Singapore: Oxford University Press, 1990. e.g. 164-5, 169. The story of the bamboo fencing is particularly telling. 213-4.

In fact, it is another modality of the old patron-client structure. Local leaders mobilize the votes of villagers in the cause of some more powerful person or group, from whom they in turn receive favours. The more powerful agency can be the army, or some government ministry, but very often it is a local businessman, often operating at the edge of legality, who sets up a system of patronage which includes at its base *kamnan* and *phuuyaibaa*n. These "godfathers" (*chao pho*) often have extensive connections with powerful bureaucrats and military personnel. They are thus in a position to offer their village level clients not only financial and business favours, but also strategic interventions with one or other government department. Through these clients, they can mobilize a lot of votes, by which they either get themselves elected, or support some pliant candidate for office. The very weakness and loose structure of many Thai political parties, very often put together by a few notables in Bangkok, has meant that they have felt compelled to recruit the help of local *chao pho* in order to extend themselves into the countryside.¹³ Naturally, this way of proceeding can be used to discredit democracy.

The point is not, however, to make a blanket condemnation of it. Like any patron-client system, it is particularistic, and those who are left out can be hard done by. The people mobilized at the base may be in some kind of debt peonage, and their being so mobilized may help to keep them there. But it can also work for the benefit of majorities. Where a deal is made by a *chao pho* with a *kamnan* to deliver the votes of the villagers in return for which some government project will be directed to the village, say, a new school building, the whole community benefits. Let us forget the abuses for a minute and imagine the system working at its best. In this way its dynamic becomes clearer. Electoral politics is a means in which some of the largesse concentrated in the political system, under the central control of Bangkok, can be directed back to the locality. In this way, it is parallel to the other patron-client relations: that between officials and villagers, and that between middlemen and farmers. Indeed, it is a third strand which has been interwoven with these.

But now it is clear that it works against the other dynamic, that of issue-driven politics arising out of elite-urban civil society. The point of this rural clientalist electoral politics is not to determine the policy framework, but to get the best for our locality within it. Moreover the very thing which frustrates the other kind of politics is essential for this: that there should be lots of overlap and unclarity and discretion in the administrative system. It is because of the discretionary power of governors and district chiefs that they can be induced to put the school here rather than there in fulfilment of the deal. The Thai system is awash with discretionary powers and funds. Perhaps the most striking case, in contrast to the Canadian system for example, concerns the funds at the disposal of MPs. Each has a 20m baht fund to be spent on projects of his/her choice in the constituency. On the other hand, they have no funds to help them do research or policy development in their function as legislators. This contrast reveals a lot about the felt point of Parliamentary representation in the two systems.

This helps to explain why Thai political parties are so unsatisfactory as vehicles of issue-driven politics. They are largely loose congeries of individuals or factions, subject at times to kaleidoscopic break-up and reconstitution. They are not, generally, membership organizations which can provide a channel whereby large numbers of non-professional politicians can have some impact on the political process.¹⁴ Their (generally) short life, instability, propensity to fragment and reform, reflect a dynamic where most MPs have a local power base, and where their primary loyalty is to produce the goods for their constituents (and if this were not primary for them, their power-base would be short-lived indeed). They have to be ready to manoeuvre, to get close to power, and to those who can dispense favours. Of course, the fragility of Thai

13 Our source here is a study on corruption in Thai society by Dr. Pesuk Phongpaichit of Chulalongkorn University, some results of which were kindly communicated to us by Margaret McMillon of the US Embassy, Bangkok.

14 See Chai-Aen Samudavanija and Sukhumonand Pandotra, 'Thailand: Liberalization without Democracy', p. 133.

parties has also been a result of the frequent interruptions in constitutional legality, but the main reason seems to be that it fits with this second, majority dynamic of Thai politics.

Parties that do well in the cities (and also in the South, where issue-driven politics seems to have developed further) tend to be closer to the more familiar model: e.g., the Democratic Party, the longest-standing formation on the Thai scene, and party of the present Prime Minister Chuan; and the Palang Dharma, with its charismatic leader and strong statements of principle. But they cannot set the tone for the whole system. Indeed, Christensen and Ammar argue that the lower voter turnout in Bangkok than in the rest of the country (43% in Sept 1992, as against the NE's 66%) —which is paradoxical on the hypothesis that Bangkok is more democratically "evolved"— springs from the sense that Bangkok voters have that the system as a whole is resistant to their kind of politics. What is the use of a few MPs voting on issues, when the great majority of the Assembly will operate by a quite different dynamic?¹⁵

Now this is obviously an unsatisfactory state of affairs. To say this is not to adopt unthinkingly an "elite" perspective by which only issue-oriented democracy is "genuine", nor to scorn "pork-barrel" politics as "primitive". All systems have an important component of this, and a system which truly banned this dimension would be paradoxically tyrannical, because not responding to what people want. We all expect our MP to work hard to get the new school built. But the problem in the Thai context is that this rural dynamic of local-benefit politics keeps issues from arising which are already determined to the detriment of peasants. Thai development, rapid as it is, has brought about greater disparities of incomes between regions (see tables). The top down control means that peasants are not heard on a host of questions to do with development and natural resource utilization and conservation. We will discuss below a number of areas in which local communities are in direct conflict with central policies, concerning forests, water-utilization, hydro development, industrialization.

Of course, peasants are aware of this, and they often oppose these policies. But the opposition is channelled into movements of protest or resistance to particular projects, rather than into support for an alternative over-all policy. Squatters in a forest resist being moved, villages threatened by a new dam mobilize and protest. Sometimes they will even march on Bangkok.

This is a very different kind of politics from the clientelistic electoral participation. It does depend on lateral organization, and not on hierarchy, except perhaps the already recognized leadership in the village, or from a respected monk.¹⁶ But it is like the electoral politics in that it is still focused on the individual case. Some bad projects may be stopped, but the source of those projects —the models of development applied by the business and bureaucratic elite— remains unaffected. It is in this sense, first of all, that this mode of politics is deeply unsatisfactory from a democratic point of view.

But it is also unsatisfactory, because these two dynamics cut across each other, and prevent Thai politics from becoming more effectively issue-oriented. The thrust of urban civil society is frustrated, and this can lead to apathy and cynicism. And this division in turn makes Thai constitutionalism that much more vulnerable to military take-over, in the extreme case, or at least to the perpetuation of the irresponsible, non-transparent semi-democratic system.

15 Christensen and Ammar: *op. cit.*, p. 27. Others explain the supposed low turnout by the transient nature of Bangkok's population, which means that the rolls are habitually swollen by names of absentees.

16 We see here again how a high degree of deference for officials can nevertheless allow for strong acts of resistance when peasants are really pushed to the wall. As was discussed above in the Introduction, note 8, images of legitimate power are always complex and many-faceted. The sense that authority is merited at some level, can co-exist with the sense that it is here being abused. These can be brought together under the idea that at some higher level, benignity and merit can prevail. One has to appeal over the heads of the unworthy lower functionaries. This has been a standard idea in many hierarchical societies. Wat Tyler appealing to Richard II, Pugachov appealing to the Tsarina. It shows how the notion that power is grounded in merit cannot only entrench obedience, but also stimulate rebellion. To understand how these images of authority work we have to appreciate the gamut of senses they take on in different circumstances. I discuss this at greater length in section 6.

We have already indicated how the "rural" dynamic accommodates itself rather well to the unresponsive bureaucratic state with multiple, duplicated channels and much discretionary power. But in the extreme case, it is also true that this dynamic is less disrupted by the suspension of the constitution altogether. There is in fact an interweaving of three strands of patron-client relations: one involving state officials (including army personnel), one involving business, and one the MP. The temporary rustication of this latter figure need not disrupt the whole exchange of favours for support, especially where, for instance, the MP is also a powerful local businessman. If officials go on dealing, a temporary reshuffling of middlemen is not necessarily a catastrophe.

The only case where the turnover would be traumatic would be where a government determined to return to the original pristine modes of top-down rule, without trading favours. The austere Thanin, appointed premier after the coup of October 1976, seemed to have aspirations in this direction. He lasted barely a year.

The issue can be put by returning to the formulation above: how to bring about a synergy between these two dynamics; so that popular electoral politics does not undermine the moves towards issue-oriented democracy among urban (and Southern) minorities? Or to put the same point from the other direction: so that rural people can come to have a say in issue politics without losing a sense of the immediate local benefits that politics can bring?

This is not an easy question to answer. In some ways, the system appears stable in its instability. It would be quite unrealistic to expect some over-all formula as an answer to this question.

But we can imagine working away at the problem from different sides, or put differently, from both ends. On one side, we can conceive institutional reforms which might increase the transparency and accountability of the state, and give a greater purchase to Parliament. On the other side, the popular sense that you cannot change the policy framework, but can sometimes mitigate its effects on you, can be perhaps modified by decentralizing power over certain decisions, bringing some parts of the framework itself under local control. In the main, we will pursue in what follows these two directions, together with a number of ancillary lines of reform which could help strengthen the democratic system.

This forward agenda will be discussed under three heads:

3.3 Institutional-Legal Changes.

3.4 The Role of the Army.

3.5 Widening and Deepening Democracy.

In a sense, 3.3 and 3.4 have largely, but not entirely to do with making the present elite civil society dynamic more effective, while 3.5 is concerned mainly with bringing about a synergy with the "rural-popular" dynamic.

3.3 INSTITUTIONAL-LEGAL CHANGES

3.3.1 Transparency

Transparency is achieved when it is clear to the public who is responsible for the decisions that affect their lives. Just knowing that the matter was determined somewhere in the large ramifying bureaucracy is no help. Decisions are transparent when one can pinpoint the agency, or board, or minister, in other words, some body or person who can be held responsible, and perhaps forced to reverse the decision. This brings us to accountability.

Accountability means that the responsible agency can not only be pinpointed, but can in some way be made responsible to the people or their representatives in Parliament, that action can be taken against them, and they can be forced to change their ways. Obviously transparency is a necessary condition of accountability, but not a sufficient one. It is not enough to know that a decision was

taken by some general, for instance, the people's representatives also have to be able to call him to book on it. The Thai system needs to make great strides on both these dimensions.

A number of things can be done at least to chip away at the lack of transparency and accountability of the Thai bureaucracy.

- A) A system of Ombudsmen; this is now being actively considered by a committee of the Thai Parliament, and meetings have already been held with Canadian officials, and a further exchange of information will take place.
- B) Creating an administrative court, which would enable citizens more effectively to challenge the decisions of Thailand's somewhat powerful, tentacular bureaucracy.
- C) A right to information act, which can enable the public to know, after the fact, but also in certain cases before, why certain decisions have been or are being taken by ministries and agencies of the government. This is especially crying in the case of large-scale development projects, which tend to be imposed from on top without adequate consultation and discussion with the people most affected.¹⁷
- D) The repeal of certain restrictive clauses in legislation which protect the laws concerned from challenge on the basis of constitutional principle.
- E) Tightening up Thailand's too broad judicial powers to condemn people for contempt of court, on the basis of their critical remarks outside the courtroom.
- F) In the same vein, Thailand's law on *lèse-majesté* is much too vaguely interpreted, and is very subject to abuse. The prosecution of a leading reform Buddhist thinker and author, Sulak Sivaraksa, is now proceeding, for remarks which cannot without great distortion be treated as disrespectful of the king or the royal family, although they were sharply critical of the authors of the last coup. His conviction would bring disgrace on Thailand's legal system. That the case has been allowed to proceed by the present government illustrates how partial the control of democratic constitutionalism still is over Thailand's bureaucratic-military-judicial system.
- G) Mention should also be made of a reduction in the size of the Senate, and a change in the manner of appointment, perhaps even to some form of election. The change in size is important given the Senate's role in constitutional changes, which have to be passed through a joint session of both houses. The present appointed personnel reflect the weight of previous regimes, with a heavy component of army appointees. (Contra to discussions in Canada, reformers seem to want a politically less influential (effective) Thai Senate: one with advisory rather than substantive powers).
- H) Strengthening the powers of parliamentary committees to initiate debate of public policy or to undertake probes; and providing these committees with adequate resources and staff. Many people consider that powerful parliamentary committees are an anomaly in a parliamentary system, and make sense rather in a regime of division of powers, where the executive is not dependent on the legislature. But however this may stand up as a general theory, the Thai state is clearly *sui generis* among "parliamentary" systems, in that it has been so much a law unto itself. This kind of countervailing power is very much needed in the present circumstances.
- I) More fundamentally, the way in which legislation is drafted and implemented has to be overhauled. The present style of drafting general principles, which leave a lot of room for implementation through directives, the power to make which is distributed among a wide variety of agencies, has to give way to tighter parliamentary drafting, and greater clarity about who has the responsibility to implement. Without this, not only does legislation not always get carried out, but it becomes very difficult to see why, or to identify who is to blame. This kind of accountability is a key condition of transparency.

¹⁷ See the *Thai Development Newsletter* published by the Thai Development Support Committee, Bangkok, vol. 22, 1993, p. 61

3.3.2 Security of the Person

This issue is obviously highly relevant in this context, as well as being important in its own right. Section 2.3 has been devoted to it, and for a detailed discussion, we refer the reader there. But we invoke it once again in this context, because it is a key condition of democratic development in Thailand. Suffice it to say here that effective guarantees are required.

3.3.3 Strengthening Civil Society

- A New Media Law

This is obviously a very high priority. Two important issues need to be addressed. First, the total ownership of the electronic media by government must end. But at the same time, an effort should be made to diversify ownership, not simply to transfer it to private sector business enterprises. Proposals have been made to invest control of some channels and stations in, e.g., civic groups, NGOs, schools and universities, and perhaps also (provided adequate measures of decentralization are taken) in local authorities. The aim is not to exclude business, but to ensure that a plurality of voices will be heard.

The second goal of the media law would be to create an independent authority to oversee and licence media, and ensure fairer access. The broadcasting authority should not have the right to censor and control broadcasting, as the earlier National Broadcasting Executive Board did. The NBEB has been transformed into the National Broadcasting Commission, but care has to be taken to drawing the limits of its mandate clearly. Perhaps an exchange of information with broadcasting authorities in other countries might help here?¹⁸

- Changes in the process required to register organizations

This now permits the Ministry of the Interior to put restrictions on the activities of NGOs - in particular they can be debarred from getting "involved in politics": clearly this has to end.

3.3.4 Measures to Make Elections Fairer and More Transparent

- A) Taking the control of elections away from the Ministry of the Interior, and confiding it to an independent body (such as an electoral commission?)
- B) Spending limits and public financing of parties
- C) Single-member constituencies (the present three-member districts have large electorates, which greatly increases the costs of standing for election)
- D) The strengthening of the 'independent' monitoring organization, Poll-Watch.

All the above-mentioned changes are now being canvassed, and some (but alas, not many) are being actively considered by the present Parliament. (Given the army's contempt for, and the developmental state's relative immunity from, democratic processes, an overarching challenge is to strengthen the legislature and the party system such that these institutions control rather than rubber stamp public policy).

3.4 THE ROLE OF THE ARMY

The army has been the nemesis of Thai democracy, intervening no less than 17 times since the installation of representative institutions in 1932. Obviously, it is very important that this threat be reduced. But even out of power, the army has a great deal of power. There are three main reasons for this.

¹⁸ Thai Development, #22, pp. 36-37

A) Armies are always powerful, unless constrained by an entrenched constitutional order, because they have a "monopoly of the means of violence", to misquote Weber. But this army seems additionally strong because, in spite of factionalism, it has traditionally had a relatively strong *esprit de corps*, nourished by a sense of mission and a unified training process.

B) Even in the regular constitutional order, the army has quite a lot of institutional space. For instance, it controls 2 out of the 5 TV stations in the country, and a number of radio stations. It has a "special" fund for security purposes which is voted, no questions asked.

Mention should also be made here of actions which have been undertaken in the past, largely it seems by the police, but with the connivance of military intelligence, to eliminate by assassination dissidents and critics. For instance, the Farmers Federation of Thailand was largely neutralized in the 1970s by such an attack on its leaders. There does not seem to be recent evidence of this, but obviously, where it exists it is one of the most pernicious and ugly forms of army/police control. This was discussed in Section II.

Then, as a legacy of the fight against the communist insurgency, the armed forces control various "volunteer" movements, like the Village Scouts, which have members in many villages throughout the country, which have been mobilized in the past for various campaigns, and which could in theory be called on again in the same way.

C) Underpinning all this has been an ideology. As mentioned above, the army developed its own blend of traditional and modern elements in coming to see itself as the guardian of the nation. The traditional element of this is a conception of the ideal society as "stable and orderly", with an emphasis on the duty and obedience of subordinates, and the self-discipline and sense of duty of superordinates. The not-so-traditional elements include the exaltation of efficiency, military "virility", of mobilization and activism, and the re-interpretation of ideals of deference and obedience on the modern military model. The mix smells a little like the brew that has produced some 20th Century fascisms, but one must beware of too facile generalizations.

This informs a conception of the army's right and duty to exercise tutelage over the society, to keep it on the right track, accompanied as it is by a contempt of parliamentary politics and politicians, as egoistic, squabbling and ineffective (which is also terribly reminiscent of European and Latin American parallels). This was given concrete form during the wars in Southeast Asia by the need to defend against communism. As a result, "national security" became an all-purpose justification. This means more than that the army felt it had a right to stage coups. It also justifies their power even in "normal" times, the institutional space, mentioned under 2 above.

Now it appears that this ideology was "bought" by many in the society in earlier decades. But May 1992 shows that it is now less accepted, and the army's bloody reaction to the demonstrations has caused a further decline of its prestige. How irreversible this is cannot be judged, but the ending of any communist menace must surely make the case weaker for the armed forces as an enclave of power.¹⁹

It would, however, be premature to count this mentality a thing of the past. Some factions thought, at least until recently, that it was the army's job to bring democracy to the nation, to clear away the obstacles and "dark influences", before the people could exercise their vote.²⁰

19 This ideology of tutelage was always fragile. In a sense it was a special transformation of the ideology common to the whole Thai bureaucracy, which has seen itself as endowed with the task of top-down rule. But there was a contradiction underlying this view: its justification historically came from the bureaucracy being in the service of the king - a connection still embedded in the Thai word for civil servant: *karatchagaan*. Once the absolute monarchy was abolished, the basis of bureaucratic hegemony became fuzziest. How did it come to be endowed with this role? The reference points of modern Thai nationalism were: nation, king, religion. The bureaucracy was none of these, could only claim to be the guardian of them. But by what title? In the end, bureaucracy and army have had to "borrow" legitimacy from elsewhere: from monarch, or religion, or from the supposed threat to all three reference points from communism.

20 See Suchit Bunbongkarn *The Military in Thai Politics: 1981-86*. Singapore: Institute of Southeast Asia Studies, 1987. p. 13

Plainly the present levels of the military budget have no justification. The Cold War is over, and its manifestations in the Indo-China peninsula seem to be disappearing. There is no serious military or "security" threat to Thailand. Governments are now thinking of cutting down arms spending, but this is being resisted - vocally - by leaders of the armed forces. The recent controversy about the policy of purchasing arms from countries which in turn buy some of Thailand's exports is an indication of this.

Next, some reduction in the institutional space enjoyed by the army is necessary. For instance, their grip on the media could be loosened, as a result of a new media law. Is there still a justification for the mass organizations sponsored by the armed forces?

But the really big issue which will have to be tackled some day is the degree to which their operations escape civilian oversight. The army represents in an extreme form the vice of the uncontrolled bureaucratic polity. At some point, the Thai armed forces will have to be brought under civilian control, as in normal states.

In this connection, the army/police capacity for covert violence of the kind mentioned in the preceding section obviously has to be curbed.

This will not happen overnight. But the change-over could be facilitated if progress could be made along three axes:

- A) An alternative vocation could be found for the army to replace the now totally implausible defense against the communist threat, and their self-attributed tutelage function. Perhaps Thai forces could get into peace-keeping. This would give them what everyone recognizes as a useful function, one that could enhance their international prestige, as well as raising their image at home. This might have the additional benefit of strengthening their ties to other armies from democratic countries, where coups are less easily accepted. Thai officers serving with the "casques bleus" would have a different kind of "socialization" from hitherto.
- B) What would also help is the crystallization of an alternative conception of "stable order" in "civil society". This already seems under way, but it needs to be consolidated and diffused.
- C) The conversion of army officers away from their ideology of tutelage towards a "constitutional" conception of their role. In the nature of things, this has to start with the new cohorts. How could their training be altered? Would training abroad help here? (eg. Canada)

3.5 WIDENING/DEEPENING DEMOCRACY

Here we return to the issues discussed above. How can we overcome the way in which the two dynamics of electoral politics, the "elite-urban", and the "popular-rural", work against each other. We spoke above of "synergy". But there is another approach. One could imagine one of these dynamics (in fact, the first) replacing the other. This approach would take note of the important gaps in Thai civil society today, notably that of urban popular organizations. If Thailand had a trade union movement, for instance, of "normal" dimensions given the size of its middle class, there might be a much greater impetus behind issue-directed politics. We would be speaking of the "urban" dynamic, rather than the "elite-urban".

Very well, let us imagine this set of popular movements developing: trade unions, co-operatives, credit unions, etc. Then let us imagine that the rapid industrialization, which is now being carried out not only in Bangkok, but also elsewhere - e.g., on the Eastern Seaboard, as well as in a number of smaller centres - ends up draining the countryside, or at least agriculture. So that from being close to 60% of the workforce in 1990 (see table), it shrinks to something under 30%. Certainly, this is a scenario desired by some planners.

In this case, the rural-popular dynamic would tend to be marginalized. It would dry up, or at least not give its stamp to the system as a whole, as at present. For example, the type of parties would reflect the dominance of issue politics, as would the demands of Parliament and the public, and so on.

Note that this scenario requires that both above developments occur. Merely having over 70% of the workforce in non-agricultural occupations, without the growth of popular organizations would be no kind of formula for democracy.

What to think about this? Well, obviously some parts of it are very valid. In particular, it is clear that the development of trade unions and other such organizations could be very positive, indeed, arguably essential for Thai democracy. But we balk at the idea that this could be the exclusive strategy for democracy. This would be in effect to say that the resistance of certain peasants against encroachments on their way of life, their frequent adoption of a pattern which avoids definitive choice for either rural or urban life (that is, going back and forth between country and city, or having some members of the family take jobs in the city), the preferences of some for maintaining a diversified mode of agriculture, and their distrust of imposed monoculture; that all these reactions would have to be over-ridden and eventually rooted out in the name of democratic progress. And even if this were brought about in the nicest and gentlest possible way (and can it ever really be?), we cannot see this making people over to what they now reject as an especially democratic path, although it may tragically be necessary in certain circumstances, e.g., in a totally male-dominated society. But wherever the mores concerned are not directly counter-democratic, the bias we can suggest here is that one strive to see how people can build democratic systems accommodating their preferred form of life.

Perhaps the point could be put another way. Even if we were convinced that the best basis for a democracy were an overwhelmingly urban society (and this is far from being clear today), the question would still arise of how we get there; and particularly, of what control present-day rural people have over this process. This is an important issue for democracy. But once you acknowledge this, then questions of how to make democracy a reality in the rural context are back on one's agenda. This context cannot just be passed over as an unfortunate obstacle to the transition.

Following this, though we recognize that the proportion of the population in agriculture will continue to decline; and that in some regions the urbanization scenario may be entirely fulfilled; and while we would be equally condemnatory of attempts to keep people in subsistence agriculture against their preferences;²¹ nevertheless, we think that democratic development for a considerable future will have to accommodate to important parts of the Thai countryside operating by the dynamic we have been calling "rural-popular".

If this cannot be set aside, then we have to hope for what we called above "synergy". This is a beautiful word, often without clear meaning. But synergy in this context would mean this: that the mode of concern for benefits obtained by the local community, as well as for the defense of its way of life in face of threats from mega-projects, big business, and top-down government, could be made compatible with a concern for issues about the policy framework, instead of excluding it as at present.

Two ways in which this might be brought about can be considered. Rendering the Parliamentary and legislative process more accountable would certainly help, because certain issues would be more genuinely up for grabs. But the most important way to bring local concern and policy issues together is through decentralization. Decentralizing power makes it possible to affect local conditions in a

21 A number of visions have been proposed for Thai agriculture, all the way from the perspective of some economists and planners, who would do everything to promote the integration of peasants into agribusiness, on one side, and certain NGO milieu which would like as much as possible to insulate them from the market, on the other. I take for granted that what will happen will be much more varied than these general formulae allow, and that indeed, it should be more varied: the important thing being to open more viable options for Thai farmers. See Amner Siamwelle, "Myths, Demons and the Future of Thai Agriculture" in Synthesis Report, vol. 1, of the 1992 Year-End Conference of the TDRI.

rather obvious way through policy decisions by representatives. Instead of dealing with a remote bureaucracy, surrounded by an aura of prestige, whose whole way of arriving at its decisions is fundamentally opaque, and even incomprehensible, one deals with a local body, elected by oneself and one's fellows, making policy for understandable reasons and with understandable impact.

This is not, of course, a total solution. It fails to be total in two respects. First, even as a solution to the problem it addresses, it cannot do the whole work, because not all power can be decentralized. What effective local government can do, however, is change the attitude to power, even central power, of those engaged in it. And the unbridgeable gulf between policy questions and issues of local impact is overcome, as Tocqueville so well understood.

Second, decentralization cannot be the whole agenda for widening and deepening democracy. The urban context exists, and will grow. Consequently, although the following discussion will concentrate on issues of decentralization, we will also raise briefly three other matters: (a) the strengthening of popular organizations in the urban milieu, especially trade unions; (b) the extension and strengthening of the urban civil society and the public sphere beyond Bangkok, to regional centres; in fact, the constitution of a more national public sphere; (c) overcoming the division between "elite" and "mass" societies.

Let us turn first to a discussion of possible modes of decentralization.

3.6 DECENTRALIZATION

Decentralization is a real possibility, because fortunately, the capacity for community action is still there in Thai society. It draws partly on village traditions, in which a number of things: the construction of the local temple, the creation of irrigation canals, the cutting of paths, etc., were done by common action. Sometimes new kinds of collective actions are taken to respond to the needs of the new situation. Philip Hirsch notes a case of villagers, threatened with indebtedness to money-lenders because of an inter-seasonal need of rice, setting up a co-operative rice bank.²² Other villages have come together to protect local forest resources against encroachment by government or developers. In still other, more spectacular cases, several villages have banded together to fight megaprojects which threaten their way of life, as in the case of the Pak Moon Dam in Ubon Ratchathani in the Northeast. It is worth noting that in many of these cases, NGOs facilitated or even helped initiate the actions. This underscores the important role that these organizations are playing in the development of Thai democracy.

These efforts could be the more effective, if the Thai political system could be modified to accommodate them. The system at present is tightly centralized, both in structure and in its manner of operation. The Ministry of the Interior, invoked in context after context in any discussion of Thai politics, exercises tremendous power over rural localities. The system is reminiscent of France of the Third Republic, but without the checks which nevertheless existed there. Provincial governors are appointed by the Ministry; as are the heads of districts. Even where local office-holders are elected (the *Kamnan*, for instance), they cannot really get anything done without the collaboration of the central government, because it alone has the ultimate spending power, as explained above.

Obviously what is needed is a radical decentralization. But this needs to be conceived in more than one way.

At present there is talk of increasing the role of elections in selecting local officers and councils. Some political parties (e.g., Palang Dharma) are now talking of having governors elected; other members of the coalition are proposing to elect some officers of the provincial administrative

22 *Op. cit.*, pp. 167-170. Another example. NET in Surin in the Northeast has also helped in establishing a network of rice banks, credit unions and co-operative stores.

organizations; there already are proposals to increase the powers of the (largely elected) councils; and village chiefs are, of course, already elected. But it is obviously necessary to go farther than this: not just to elect officials, but to give certain jurisdictions over to provinces, cities, districts, and/or villages, along with the taxation/borrowing powers they need to act on them.²³ In other words, it is necessary to break the single chain of command and allow real authority and initiative to local bodies within their jurisdictions. The Tocquevillian principle holds here: empowering people cannot by-pass the local level. Even their ability to exercise power at higher levels depends on the experience and confidence gained, and on links forged, at the local level.

It seems as though this kind of empowerment is envisaged in the present government's proposals to upgrade local councils.

The bill which is at present going through Parliament would create a council, all of whose members would be elected as such. Under the present dispensation, half of the members are *ex officio*, the village heads, and the *kamnan*. These are indeed elected, to their own offices, but this gives them automatically the right to sit on the council. Particularly, in view of their tendency to be drawn into the plans of the central government apparatus, this is not a good basis for truly independent councils. On the new scheme, the *kamnan* would be an executive officer responsible to the elected council.

In addition, the councils would be given the status of juridical persons, with powers to borrow money, and to raise taxes. The bill is in some respect cautious, in that the councils would not be able to accede fully to their new status until they are capable of raising an annual budget of a certain minimal amount (150,000 baht a year). By this criterion, it is estimated that only about 400 of roughly 6,000 *tambons* will be able to take full advantage of the law right away. But others will follow suit later.

This is in a sense a big step. Proposals of this kind have been bandied about for something like 40 years. Now at last it appears that something is going to happen. The hesitancy and the safeguards come not only from opposition to the principle of decentralization which still exists within the bureaucracy, but also from the concern of its supporters that this measure, as the possible harbinger of all future decentralization, just has to work. For those with a full agenda of decentralization, this is the necessary starting place, a local level whose operation is relatively familiar, to which people can easily relate. The danger is that it lacks the scope to affect their lives significantly. It is possible that in bureaucratic circles the hope is that these councils, lacking experience, lacking research staff, lacking great means, can be relatively easily domesticated into the central policy agenda.

For this reason, it would be important to ensure as wide a jurisdiction as possible to the councils. They should not just take over the tasks of the Ministry of the Interior in the locality, but also have charge of health and education, within the usual national policy guidelines, as well as important responsibility for the environment.

There will also be an important role for the NGOs here, providing expertise, training, and (volunteer) manpower in the first years, when the new councils may suffer from a lack of experience and trained personnel.

In fact, the intellectual resistance emanating from the traditional administrative culture is very strong. People argue that decentralizing power would just open another field for the operation of "godfathers" (*chao pho*), as though disempowerment at the base were not just as much a cause as an effect of these counter-democratic patron-client webs.

23 The present state of fiscal dependency is illustrated from this example. The municipality of Chiang Mai was allocated in 1991 a budget of 234.9 million baht, although the province paid over 5 billion baht in taxes to the central government, most of that being produced by the municipality. Almost a quarter of the municipality's budget was a subsidy from the central government. (Source: Scott Christensen, *Democracy without Equality?*, Synthesis Report III for the TDRI year-end conference 1993, page 9 n.4.) No genuine decentralization of power can exist with these fiscal arrangements, insensitive, sometimes in a rather visible fashion, to local concerns and problems.

Some have even argued, in relation to the proposal to elect governors, that it might be an encouragement to regionalism, and even eventually to break-away movements in the South and perhaps the Northeast. This does, indeed, lay bare a standing anxiety which can be encountered among the Thai official class. The joint effect of more than a century of centralization, and of a number of historical threats to the integrity of the Thai state, emanating from colonial powers in the last century, and from the perceived dangers of "communism" in Southeast Asia in this, have created a hypersensitivity to regional movements, which may easily prove counter-productive in the long run.

If this anxiety can be allayed, the Thai system could probably benefit from a much greater extension of elected local authorities with their own jurisdictions and tax powers. Not just to provincial governors,²⁴ which by itself might not change very much, but to the creation of genuine provincial governments, with legislatures and executives. It is not true, as some Thai claim, that this form of government is only suitable in a federation. The term 'province' is in this sense misleading. Thai provinces are more like French départements. The fixing of their powers will always be within the competence of the central government, unlike in federal systems. But that is not a reason not to give them powers. Viable elected local governments also flourish in unitary states, and are generally a positive factor in their democratic life.

Indeed, a case could be made for going further still. The great regions of Thailand have each their own identity: the Centre, the South, the North and the Northeast. In some cases, the regional dialect is distinctive. Many problems are common to whole regions. From a Canadian perspective, here is where there might be a case for a federal system, or at least for region-wide governments. The reaction of many Thais would undoubtedly be horror before the dangers of regional patriotism and eventual secession. But the truth is probably quite the reverse. It is excessive attempts to avoid recognizing regional differences which eventually, with the growth of education and consciousness, provoke antagonistic regional movements. At some point along the road, Thais will have to come to terms politically with the fact that many of them have complex identities, e.g., that they can be at once Isan and Thai.

This all obviously requires further discussion and study. There is a case for promoting more exchange and discussion between interested Thais and those knowledgeable about local government regimes in different countries.

Decentralization is thus an essential part of the democratic agenda. But perhaps it needs to be conceived also more widely. We have been talking here about decentralizing representative institutions, empowering local government. But there are other ways in which people in a given locality can be empowered. Let us explore two such here.

The first involves extending the principle of local stewardship over common resources. In order to see the relevance of this, we have to take account of the fact that one of the major sources of conflict between central government and local communities is the management of natural resources. That development has been rapid, and as everywhere in the world, it threatens the environment. Forests, which a few decades ago used to cover more than half the country, are now down to less than a quarter. The growth of industry, tourism, and the extension of rice cultivation (not to speak of the felling of forests) is putting pressure on the country's water resources.

How to manage these looming crises? In administrative circles, it is often taken for granted that this requires more central control. It seems self-evident that the threat to forests, for instance, comes from unregulated private action. In particular, the pressure on land for Thailand's growing population has led to peasants entering and settling old forest areas. In the official outlook, they need to be restrained.

24 The weight put on the issue of elected governors by various Thai proponents of decentralization may be surprising, given the inadequacy of this measure alone, without transferring jurisdictions and budgets, to effect meaningful change. Many in the NGO community are quite aware of these inadequacies, but have seized on election of governors as an issue which the public at large can relate to: the governor being a relatively high profile figure, and frequently as the appointee of the central government.

This is one of the big contemporary sources of conflict between government and peasants. These latter, who have often occupied their "forest" lands for decades (were even in some cases resettled there by the army in its earlier concern for countering communist infiltration), are now told that they are illegal squatters on reserve land, and have to be resettled. Some bruising battles have been fought around these issues.

On their side peasant spokespeople retort that much deforestation has come from logging companies who were given franchises by the government (or where the absence of franchise was not effectively policed by the government). But the main point should not be to attribute blame for the past. The issue is, how to manage and preserve these resources in the future?

Now peasant communities have shown that they are well able to understand the importance of the forest. They, indeed, are generally the first to suffer, e.g., from seasonal flooding and drought when a watershed's tree cover is destroyed. When they come to see this, they are very effective enforcers of the conservation rules required, provided they have a sense of proprietorship over the land they live off. Indeed, experience in many parts of the world has shown that local communities are the only really effective enforcers of such rules; that police surveillance against infractions by individuals rarely succeeds without community help.

This suggests that wherever possible, stewardship over forest resources ought to be handed over to local communities. In some cases, this would require negotiating beforehand the rules which would be applied. But to this negotiation, local people bring a contribution in lore and familiarity with the region which often matches that of government experts.

Interestingly, a precedent already exists for this. The Royal Forestry Department recognized the Huay Kaew Forest Preservation Committee as the *de facto* managers of their forest area, according to their own regulations.²⁵

A very interesting proposal has been made by Dr. Gothom Arya, which in a sense brings together the two kinds of decentralization we have been discussing. There is a plan to reafforest 20m rai of land in time for the King's Silver Jubilee in 1996. Dr. Gothom proposes that a substantial proportion of the funds for this should be handed over to the new administrative councils, giving them an important role in conservation of the environment. It is likely that they will be more concerned to extend the area of all-purpose forest, as against concentrating on the plantation-type development favoured by the government (and which in the case of eucalyptus trees, is an important source of conflicts).

This approach would ultimately involve a change of policy of the Government and the Royal Forestry Department. At present, the RFD is trying to expel peasants from land which has been declared forest reserve, often *ex post*, that is, after peasants have moved in, or even been sold the land. The conflicts generated by this policy have been notorious. For instance, in early March this year, the police evicted 2,000 villagers from Dong Yae National Forest, at a cost of 20 injured, some of them seriously.²⁶ This kind of incident recurs again and again. An alternative policy would be to grant villagers title to the land, in return for an agreement on standards of forest maintenance, and hence on modes of exploitation of the land. If a negotiated agreement could be secured on a package of this kind, the land-owners themselves could assume responsibility for conservation.

This would also help meet another important need of Thai farmers. Many of them lack clear title to their land, for a whole host of reasons, some of them going back to the more informal legal regime prevailing in earlier decades. This is often a severe handicap, since it limits their ability to borrow with land as collateral, and to make improvement, and generally restricts their

25 See Sunchai Wun Gao, 'Ecological Movements and the Challenges to Sustainable Development in Thailand' p. 16

26 *The Nation*, Bangkok, March 3, 1994

options. The government's slowness to move on this issue itself perhaps betokens their basically paternalist stance towards peasants.²⁷

Unfortunately, the general trend of government policy seems to flow still in the paternalist direction, quite at odds with what is being proposed here. Two measures which have been mooted in recent years indicate this. The first is a draft Water Management Bill to control and direct the use of water nationwide. The second is the proposed National Agricultural Council Bill, which proposes to exercise some national control over crop choices. It would "zone" certain areas for certain crops. Whoever chose to plant crops not designated for their zone would be denied the usual government services: loans from the BAAC, etc. (The council is supposed to have some farmers on it, but these are to be named by the government, not elected.) Both these measures reflect a philosophy exactly opposed to the one explored here. The crisis is to be met by tightening control at the centre. Whereas the principle of local stewardship calls for solutions to be negotiated with, and ultimately managed by, local communities.

Another major source of conflict between rural communities and the state is the large megaprojects sponsored by the latter, often in collaboration with business. Such are the major hydro-electric constructions, for instance, or reforestation schemes involving eucalyptus.²⁸ In some cases, these projects have been opposed, and even stopped by local mobilization. But in all these cases, the government's mode of procedure was to set the project in motion without consultation; without even giving the minimum information about the costs and consequences of the enterprise.

A different way of proceeding would be to consult the populations affected beforehand; indeed, to set up mechanisms of consultation and negotiation, in which local communities are given some statutory right to share the information, and to be heard. Mechanisms of this kind would put a premium on coming to an agreement with localities before applying centrally-approved policies. (The access to information act discussed above in section 5 would obviously have relevance here.)

An example in particular came to our attention: the building of the Pak Moon Dam in Northern Thailand, with the consequent flooding. The original construction was an example of how not to do it. People were barely informed, let alone consulted. But the authorities have been budged towards *ex post* negotiations with some of those affected, in regard to compensation and assurance of future security. These negotiations were undertaken on the initiative of an NGO, the Society for the Promotion of non-Violence in Thailand. The Society would like to pursue this way of proceeding further. They plan to do studies of past conflicts, and hold debates and workshops on the potentialities of this kind of mediation.

Eventually, perhaps, this way of operating could be the object of a statutory code of consultation and negotiation for this kind of case, one which might even give some cards to the hand of local communities, analogous to those enjoyed by aboriginal groups with land rights in Canada, for example. (The proposed administrative court could be a site for complaint or redress against bureaucratic injustice).

We mention this, because:

- a) it is likely that this kind of problem will arise over and over again in Thailand. As mentioned earlier, there are various points at which global development policies decided at the centre are going to clash with the perceived goals and values of those affected locally. Other important examples in Thailand are: taking over of lands in the name of protecting forests; contracts for rocksalt mining, which have polluted the water in certain localities.

27 See Ammar Siamwala, "Myths, Demons and the Future of Thai Agriculture", Synthesis Report, vol 1 of the 1992 Year-End Conference, "Thailand's Economic Structure: Towards Balanced Development?", p. 24.

28 Farmers frequently object to these trees, because they absorb a tremendous amount of water and render other uses of land in the locality impossible.

- b) this kind of empowerment can sometimes have a more immediate and visible pay-off than increasing the jurisdiction of local government. It thus bolsters the perceived value of democratic organization - in this case, getting together behind a negotiating team, rather than participating in an election. But democratic organization grows with exercise, and mobilizing in this dimension will probably have a spill-over effect onto electoral politics.
- c) a more speculative point: this procedure may be easier to make operative in Thailand than it might be in certain Western societies. This would be because it would draw on existing traditional understandings of proceeding by consensus. Here is where the discussion in the Introduction, sub-section 2, of traditional Thai models of legitimacy may become relevant. Thai images of the state as a moral community (for instance, the polity ruled by a king as an upholder of Dharma) do not have the place for adversarial politics that Western societies have developed. While rivalry in the pursuit of power and the advocacy of policy is inseparable from democratic politics, societies can differ on the relative importance they give to adversarial politics. A procedure of the kind outlined above puts a high value on coming to a consensus between the parties before acting. This contrasts with parliamentary politics which is based on a majority-winner-take-all principle. We might speculate that perhaps Thai society would out of its traditions relate more easily to the first rather than the second, as one of its models for politics-by-consent. Indeed, it appears that virtually all cultures but that of the modern west have this preference.

Put more generally, we might say that empowering people can take place along three dimensions in a democratic society: (i) representative institutions of government; (ii) access to courts; (iii) the kind of negotiation-consultation just described. Western democracies accentuate the first, and in some cases, put a tremendous emphasis on the second. Perhaps we need to explore models which accentuate more the third.

We have identified three axes of decentralization which seem worth pursuing. But obviously, there has at the same time to be an increase of initiatives from the base if progress is really to be made on any of these axes. This is where the work of NGOs will continue to be vital, and very much needs to be supported.

Let us turn now to the other directions in which the agenda of widening and deepening democracy can be pursued.

A) Urban Organizations

The striking and significant weakness here is that of Trade Unions. The reasons for this are outlined in the Appendix on Trade Unions in Thailand. Apart from the changes which can be made in the legal context, it seems that the most significant reason for this weakness lies in the self-understanding of many urban workers, who still see themselves as temporary migrants from the countryside. In the nature of things, this attitude will change, as more people come to the city, and those who originally came with this attitude come to see themselves as permanently entrenched in their new condition as urban workers.

But we should also note that the sense of themselves as migrants does not prevent non-elite Thai from organizing. There have been a significant number of cases of slum areas organizing in order to defend themselves against clearance, or have a say in redevelopment plans. Some of these have been initiated by NGOs, which have specialized in this kind of activity. Indeed, the question may easily arise: why organizations of slum dwellers seem easier to set on foot than trade unions.

The comparison behind this question is in a sense unfair. But it still may bring out something illuminating about Thai society. Slum dwellers' organizations build on kinds of experience which are familiar to rural Thai. As mentioned above, villagers have often associated together for such purposes as building a temple, or an irrigation system. This experience can be drawn on to set up

what are in effect small-scale credit unions, capable of meeting their members' needs for credit, without recourse to expensive, often ruinous outside sources. The slum-dwellers' organizations follow the same pattern. Indeed, in some cases, NGOs start with the organization of such an informal credit union, in order to build towards the residents' organization.²⁹

These modes of organization are familiar in four respects: (i) they are small-scale; (ii) they involve people who live in proximity to each other; (iii) they form around goals with which people are either already familiar (like pooling savings for credit needs), or to which they can easily relate (like the defense of a whole slum community threatened with eviction). It is clear, however, that this last restriction is far from absolute. The range of these goals has in fact widened. The remarkable work of the Duang Prateep Foundation in supporting slum community kindergartens, which give children an early foundation which enables them to perform much better later on in school, shows how new common objectives can become established and familiar. There are now 15 such kindergartens in Bangkok, and the Foundation is also taking initiatives in new fields.

Very often there is also a fourth factor: (iv) the organizations draw on existing kin networks. This is because people are often helped in their migration to the city by their relations already there, so that they will very often be living close to them.

Now this fourth factor also can operate with factory recruitment. But in these cases, it has another twist. Factory owners will often take steps to recruit in rural areas, or will use middlemen for this purpose. In this case, too, they will recruit through kin networks. But the network here can work against organization. Akin Rabibhadana³⁰ tells the story of a girl, injured at work, who was rather callously let go afterwards. Part of what deterred her from complaining, was the possible consequences for her relations who might want to seek employment in the same factory. In fact, the case here was complicated, in that there was also some element of deference involved, typical of the Thai patron-client relation.

In this kind of case, the network operates, through deference and some fear, to entrench subordination. But in the case of slum-dwellers organizations, familiar modes of networking can bring about effective self-help organizations. This, however, still leaves an important step to be made. To be effective intervenors in urban democracy, these small self-help organizations need to be linked together laterally, and to endure in time - in short, to have the kind of wide solidarity and durability that trade unions offer their members. How to move a culture of face-to-face networking, often focused on temporary problems, into the building of large-scale and lasting organizations? This is the big challenge for Thai popular democratic organizations in the urban setting.³¹

We have been talking here about popular movements in the cities. But obviously broad-membership regional and national organizations can play a positive role in the countryside as well. A small national credit union already exists. Its expansion, and the growth of farmers' organizations, could greatly increase the weight that villagers and their concerns command in national politics.

B) Extending the Public Sphere

One of the important features of the protests against the repression of May 1992 was that they spread beyond Bangkok to other urban centres. This represents in a sense a geographical widening of the effective constituency for constitutional democracy. It reflects the way in which in a number of regional centres - Chiang Mai, Korat, Khon Kaen - a "public sphere" is expanding. In the last five

29 Information provided in conversation by Akin Rabibhadana of the Crown Estates Foundation.

30 *Social Inequality: A Source of Conflicts in the Future?* Synthesis Reports, vol IV, TDRL Year-End Conference 1993, pp. 32-3.

31 This is linked to the problem, raised above and discussed below, of the Thai social imaginary: how to build images of the whole society as a moral community, and not just a field of power, which are connected with specifically democratic institutions and procedures?

years or so, a number of new advocacy groups, movements of concerned citizens, and NGOs have sprung up in these centres. They have helped to animate a widening public debate, through newspapers, books and pamphlets, seminars, panel discussions, and "popular assemblies". The lead in these discussions is often taken by university people, and those involved in the new NGOs.

These developments are very positive for Thai democracy. They represent an expansion of what we have been calling the "urban-elite" dynamic. They also give added force to the moves for decentralization. This is not only identified as a theoretically desirable move, as it is seen to be by many Bangkok intellectuals: in the regions, it can be linked with a set of local problems and grievances. For instance, the demand to elect governors can gain strength from the felt insensitivity to the problems of the region of the governor, appointed as he (very rarely she) is by the Ministry of the Interior, and often serving for a short term.

These local spheres are still weak. They often lack the means to study local problems in depth, and disseminate information and ideas widely. They could do with support from outside. (A lot of interesting study and publication has been done by the Local Government Studies Project at Chiang Mai University, which is now threatened with closure for lack of funds.) They also greatly benefit from links between themselves and Bangkok. Thailand would gain from the development of more nation-wide fora, bringing people together to discuss public affairs. I mean by this organizations linking different centres, but not simply as adjuncts to Bangkok.

C) Overcoming the "Elite-Mass" Gap

As mentioned at the outset, Thai society is still very divided between an elite, roughly 10% of the population, and the rest. It is divided, partly by habits of deference, which go way back into its "feudal" past, and are still very much alive, for instance, in modes of address. (e.g., calling superiors "nai"; see the discussion in Introduction, sub-section 3). It is also divided by great differences in education: while the vast majority of the population is literate, and has done some primary schooling (in recent decades up to six years in school), only a little more than 10% have secondary schooling and beyond. They are destined for different jobs, and a different style of life. These divisions are complemented by differences in outlook, which have been often invoked in this discussion, where we have spoken of the "elite-urban" dynamic in contrast to the "popular-rural" one. Relating to the whole society as an arena of decision, over which one can have some control, at least in theory, is something that is beginning to make sense for elites. This change of consciousness has been one of the driving forces of democratization over recent decades. But this way of seeing things seems to figure much less in popular imagination, where the individual, or family, or often the face-to-face network, is seen as up against a larger society which can sometimes be benign, sometimes be defended against when it (more frequently) is not, but cannot be controlled.

One of the ways in which this gap between the "two nations" can be slowly made up is through the spread of post-primary education through broader strata of the population. This becomes an obvious part of the agenda of democratization. It is in any case essential to an agenda of industrial development, which will require a much higher proportion of the labour-force with at least secondary education.³² But its importance for democracy must not be lost from sight.

32 It is estimated that by the year 2000, three quarters of the work-force will still not have secondary education. The needs of a high technology industrial economy, if such is the path Thailand chooses, will exceed this. See Mingsam Santikarn Kaosa-ard, "Manufacturing Growth: A Blessing for All?" in Synthesis Report vol. 1: the 1992 Year-End Conference of the TORI "Thailand's Economic Structure: Towards Balanced Development?" p. 2.

3.7 THE PUBLIC SPHERE

In conclusion, we will look at two areas, where it is difficult to establish hard and fast conclusions, but which may be rather significant for the future of democracy, in Thailand as elsewhere. This is because it is in these areas that changes of consciousness may come about which could have an important effect on how people understand their place in society, and the definitions of legitimacy they accept.

The evolving public sphere will be looked at under three heads:

A) First, at its growing internationalization. We mentioned above how elite public opinion in Thailand has already been partly shaped by international currents, and that this has in recent years been working in favour of democracy.

It is of course in urban areas that public spheres and civil societies are maximally porous, are in fact maximally open to international contacts, and to what can in certain regards be called trans-national public spheres. Thus public opinion being mobilized in one country on some issue is the more effective, the more it is linked to a trans-national public opinion, expressed through organizations like Amnesty International, through internationally circulating media, and through organizational links across boundaries. National public opinion has greater self-confidence the more it feels itself so connected, and governments are the more wary of opposing it. Public spheres, at least in urban areas, are no longer closed worlds. Something of the same goes for the organizations of civil society, which of course once linked internationally, are not only strengthened in themselves, but also play a role in linking public spheres. Bodies like the Asian Cultural Forum on Development and Asianet are examples of such trans-national linkages.

This means that outside bodies can perhaps play a useful part in strengthening public spheres and civil societies, for all that the main development has to be endogenous, to the extent that they can facilitate links with other societies, both regionally and globally.

Something analogous can be said for the impact of mass-mediatised popular culture, which is now to a large extent international in scope. While Michael Jackson was fleeing an apprehended indictment in his own country, an all-India Michael Jackson look-alike competition was being held in Bangalore.

Modern city-dwellers belong to many "imagined communities"; not only family, (perhaps) clan or ethnic group, but also city, nation; and on top of this, they can see themselves as belonging to the ensemble of those who resonate to certain images (e.g., to Michael Jackson). The fact that something significantly different is made of those images in different cultures is very important, but does not cancel the reality or relevance of this internationalization.

B) It is clear, however, that when it comes to democratization, the key developments will have to be indigenous. A crucial determinant of the functioning of any society has always been the way in which it is "imagined" by its members: what are the understandings shared by individuals of the ways they are linked together, not only locally but in larger units? What are the dominant images of order which they feel beholden to? We were already invoking something like this in the Introduction, sub-section 2 in speaking of traditional Thai conceptions of order in society, of "nation, king and religion". The army ideology invented a crucial modification of this, with a highly anti-democratic thrust. Thai democracy will require its own new imaginings, which are clearly well under way.

These are fed not only by the political developments which they also facilitate, e.g., the holding of elections and different forms of popular consultation, and not only by new experiences, like living in a large commercial-industrial city, but also by the ensemble of images which circulate in the media. This means not only, not even primarily, the information media, but above all films, TV, popular performers. The important point is that democratic institutions do not properly "take" in a society until they not only exist as legal fact, but have been "imagined" by masses of people as channels of popular power and collective decision. We argued earlier that this could perhaps best

come about if traditional Thai images of legitimacy were to be connected to democratic forms. We can perhaps say a little more now about what this would involve.

We mentioned in an earlier section how the larger society, in which a family or kin group, or face-to-face network operates, can be seen as a domain of amoral power; but that people can also respond to society as a moral community. It may seem paradoxical that a culture can allow a purchase for two such opposite images, but this is in fact rather common. We just need to think of the frontier as "imagined" in the American Western: a condition of amoral force is in contest with law founded on virtuous strength. The important issue is what makes one or the other image seem relevant, seem applicable.

The underlying Thai images of the state as moral community connect power to merit. As Stanley Tambiah puts it:

*There is a deeply entrenched Buddhist conception of political sovereignty and righteousness as the ordinating principle in society, a conception of political ethics and morality which acts as an enduring yardstick by which to measure political performance and as an inspiring but not wrought-in-detail ideal to which political aspirations of different complexions can refer themselves.*³³

Of course, Thai official society regularly claims to instantiate this ideal. This image is usually met with the massive skepticism of ordinary people, who in their daily lives encounter police who demand pay-offs after every traffic accident, no matter how minor; officials who allow people in high places access to forest reserves for commercial purposes; local power-figures without whose support no venture can be started or continue; professional assassins who might be around the next corner; bogus monks and nuns who profit by fleecing the gullible; scandals such as those surrounding the royal decorations and the Chit Fund - all of these events, some of which receive a minor airing particularly in newspapers and magazines, others of which circulate as part of the truth of local existence, provide the converse side to the image of Thai life and the nation promulgated by the official media.³⁴

This image of macro-disorder contrasts with an understanding of a smaller, more intimate world as ordered and good.

Yet, in another sense, the dominant imagery provides a powerful focus for identity as a member of a community which is united in its separateness and difference from the sources of anarchy and disruption. This is affirmed over and over in popular culture as the world of the ordinary person, doing his or her best against the array of dangers ever present in the world. Whether smalltown petty capitalists, market vendors, rural producers, the urban worker, or the archetypal commentator of modernity, the big city taxi driver, this sense of a virtuous and ultimately victorious Thai identity, opposed as it is to the evils in the broader society, is confirmed and recirculated through conversation, popular songs, sayings, in popular theatre (e.g., *likay*) and in people's commentaries on the media, whether in the television news or a gangster film, through which they may be reading local politics or even national-level events.³⁵

The claim to make is that this sense of ordered community, usually identified with the intimate circle facing macro-disorder, can sometimes be widened to include the whole society. These are moments when the ideal of righteousness on which the society is founded seem at least momentarily to have power. Moments like the aftermath to October 1973, and to May 1992. These will be moments at which a credible moral leadership appears on the scene, and appears to have the backing of powerful

33 "Sangha and Policy in Modern Thailand: An Overview" in Barowell L. Smith, ed., *Religion and the Legitimation of Power in Thailand, Laos, and Burma* (Chambersburg, PA: Anima Books, 1979) p. 123.

34 Annette Hamilton, "Rumours, Foul Calumnies and the Safety of the State: Mass Media and National Identity in Thailand" in Craig Reynolds, ed., *National Identity and its Defenders*, Monash Papers on Southeast Asia, no. 25 (Melbourne, 1991) p. 369.

35 Annette Hamilton op. cit. pp. 370-1.

forces - be they the people in demonstrations, the army, or the king. In other words, the cynical perspective, that of macro-disorder, however it may dominate the everyday, is not the only possible one. There is another one which can emerge when circumstances are right, and whose spirit is caught by these two verses of a popular song, also quoted by Hamilton:

*Be proud that you are a Thai
Uncolonized and generous
Siam is the Land of Smiles
We should be proud
We Thais love our nation and religion
Adore the virtuous king
Respect our rights, forever welcome
With a Siamese smile.³⁶*

Now a social imagining hospitable to democracy would be one in which this positive sense of the whole society as moral community would have a bigger place. This is not to say that it does not have to earn it, that in fact the rule of gangsters and special interests has to be curbed. That is what, for instance, the measures of decentralization are meant to effect in the countryside, and the moves to transparency and accountability at the centre. But the causation also runs the other way. If we need a better reality before people can have faith in it, without an increase in faith, this better reality will not be able to sustain itself. A democratic social imagination must see the society as a whole as a potential locus of righteousness.

But it must also connect this righteousness with democratic ways and procedures. Things going right cannot be seen to depend exclusively on men of merit appearing from the social stratosphere. If leaders of credible morality are essential, they have to be seen as empowered by popular support. This is the kind of mutation in traditional Buddhist notions of legitimacy which could help entrench democracy in Thailand.

These images will obviously have to emerge from Thai society itself, in its media and forms of popular culture, however much exchange and borrowing is taking place with the globalized cultural scene.

C) These issues about media and the social imaginary concern both urban and rural milieux. But there are some questions that address these latter in particular. What media penetrate to the countryside? How often do people see films? How many have TV? What print media are read? What do these images convey?

Some claim that the effect of television in the countryside has been to enhance the prestige and attraction of Bangkok and the "good life" it offers. The "goodness" is a matter of more consumer goods, but also (supposedly) greater independence, and a certain glitz and cachet, that of being "modern". These images help to draw people into cities.

But do they also change the imagined community of village-dwellers? How do they change images of the nation? (and, within the nation, of the army?) These questions need to be explored further.

3.8 RELIGION AND THE SANGHA

Another major dimension is the place of religion in this change. If we assume that democratization in society comes about partly through people changing their images of normative order, then there has to be an important role for religion in any society in which it has not been marginalized (which

it certainly has not been in Thailand). We are touching here on the issue raised in the previous subsection: in what way can traditional images of legitimacy be refashioned and rejuvenated, in order to give strength and meaning to a democratic order? Reform-minded members of the Sangha must be one of the sources from which this justification of democracy and human rights within a context of Theravada Buddhism is coming. What are they saying? How are they framing this justification? Is it making headway? How could it be helped to make more?

There have been a number of attempts to re-interpret and renew Buddhism in contemporary Thailand. One obvious fruit of these has been the renewed interest in meditation practices. One of the most popular manifestations of this interest is the Thammakāy (dhammakāya) movement. But the political impact of this seems to be rather conservative and quietistic. This understanding of meditation practice seems rather to reaffirm the common traditional understanding of religious practice, as we see it in the great majority of monks, for instance, who see their vocation as quite outside politics or social activism (which does not in their view exclude their blessing the monarchy or official institutions).

Rather different in their impact have been movements which (as they see it) attempt to purify Buddhism, to turn it away from a focus on ritual, on gaining merit, and even worldly success through blessings and acts of piety, and to focus more on (what they see as) the original goal of Enlightenment. The late Phutthathat (Buddhadasa) has been a major figure in this regard. This stream tries to return to what (it sees as) the original core of Buddhist teaching, about the unavoidability of suffering, the illusion of the self, and the goal of Nibbana. It attacks what it sees as the "superstition" of those who seek potent amulets, and the blessings of monks, and the like. It wants to separate the search for enlightenment from the seeking of merit through ritual. And it is very critical of the whole metaphysical structure of belief which has developed in mainstream Buddhism, about heavens, hell, Gods and demons, which play a large part in popular belief. It has been described by the Sri Lankan anthropologist, Gananath Obeyesekere, as a "protestant Buddhism".³⁷ In all these respects, it differs very markedly from the Thammakāy.

It is this stream which seems to be producing new reflections on Buddhism as a basis for democratic society and practice. This is not to say that all of those concerned Buddhists, monks and lay, involved in democratic activism of one kind or another have been of this persuasion. But it is the reform stream which seems to have produced the concern to develop a Buddhist vision of democratic society. One may see something paradoxical in this, in that this rather austere reformism is espoused by a relatively small elite, rather far removed from the religious outlook of the mass of the people. But the dedication of some members of this elite to democracy, equality and human rights commands respect.

Phutthathat's reformism was the very opposite of a disengaged religion, unconcerned with the world. On the contrary, he and those inspired by him have always stressed that the path to enlightenment is inseparable from that of concern for all creatures, from metta (loving kindness) and karuna (compassion). We cannot really be concerned with our own liberation without also seeking that of others, just as any acts of injustice towards them redound to our own continued imprisonment in illusion. Saneh Chamarik quotes the Buddha: "Monks: Taking care of oneself means as well taking care of others. Taking care of others means as well taking care of oneself."³⁸ This view leads to an activist concern for social justice and well-being. Phutthathat spoke of a "dhammic socialism". It is a spiritual stance which entails heightened standards of personal commitment and responsibility, of

37 Richard Gombrich and Gananath Obeyesekere, *Buddhism Transformed: Religious Change in Sri Lanka* (Princeton University Press, 1988), chs 6 & 7.

38 Saneh Chamarik, *Democracy and Development: A Cultural Perspective* (Bangkok: Local Development Institute, 1993), p. 137.

probity and dedication to duty, even of self-sacrifice and dedication to the poor and downtrodden. Following Obeyesekere's analogy, one could say that it is reminiscent in this respect of Max Weber's description of early Calvinism, which propagated a "this-worldly asceticism",³⁹ that prompted responsible, disciplined social action.

But this concern is not necessarily democratic. It could also find expression in other modes of social reform action, including those which see the agency of reform as a minority with the right intentions. These modes are, after all, well rooted in Theravada Buddhist history, in particular in the paradigm model of the Emperor Asoka as the ideally just ruler and upholder of Dharma. This is, indeed, one of the models on which the Thai monarchical state was based. The dhammaraja is undoubtedly understood as an agency for good, for the welfare of the people, but he is not in any normal sense a democratic agency.⁴⁰

Phutthathat himself was not entirely clear on the issue of democratic agency. There has, however, been a democratic strand in this general movement. Panyanantha made a democratic application of Phutthathat's thought, for instance. And something similar could be said for Photirak and his Santi Asok movement. This has acquired additional political relevance recently, in that the charismatic leader of the Palang Dharma party, Chamlong Srimuang, is a follower of Santi Asok.

Beyond these, there are followers of Phutthathat's reformism which are deeply committed to democracy, such as Sulak Sivaraksa and Saneh Chamarik. They and others in their milieu are highly active in the NGO community. They are concerned with alternative models of development, which would be more ecologically sound, concerned to put limits to growth, critical of "consumerism", and conducive to social equality for the limitation of greed, one of the sources of anger and conflict.⁴¹

We can see here an agenda of universal well-being. But what specifically pushes to democracy, that is, to ensuring that people take charge of their own lives, rather than simply being the beneficiaries of benevolent rule? Two things seem to come together in this outlook to underpin a strong democratic commitment. The first is the notion, central to Buddhism, that ultimately each individual must take responsibility for his or her own Enlightenment. The second is a new application of the doctrine of non-violence, which is now seen to call for a respect for the autonomy of each person, demanding in effect a minimal use of coercion in human affairs. This carries us far from the politics of imposed order, decreed by the wise minority, which has long been the traditional background to various forms and phases of military rule. It is also evident that this underpinning for democracy also offers a strong support for human rights legislation. And that, indeed, is how it is understood by thinkers like Sulak.⁴²

There is an outlook here which converges on a policy of defense of human rights and democratic development, but which is rather different from the standard Western justifications of these. It is not grounded on a doctrine of the dignity of human beings as something commanding respect. The

39 "Innereweltliche Askese": see *The Protestant Ethic and the Spirit of Capitalism*, tr. Talcott Parsons.

40 The reform strand which I am describing generally takes a positive view of the historic dhammaraja tradition of the Thai polity, suitably re-interpreted. But they want to distinguish this quite sharply from the other classical tradition, which they reject, that which sees the king as *devaraja*. This view, of Hindu origin, sees the king as ensuring through his ritual action harmony between polity and cosmos. The emphasis is on ceremony rather than on right rule. Many Buddhist intellectuals today want to distinguish the Sukhothai period as their paradigm from the later Ayutthaya régime, which they claim introduced elements of the Hindu *devaraja* tradition under alien Cambodian influence. These ancient régimes still have powerful symbolic resonance in today's debates. See Peter Jackson, "Thai Buddhist Identity: Debates on the Traiphum Phra Ruang", in Craig Reynolds, ed., *National Identity and Its Defenders: Thailand 1929-1989*, Clayton, Victoria: Monash Papers on Southeast Asia no 25, 1991, pp.191-232.

41 See Sulak Sivaraksa, *Seeds of Peace: A Buddhist Vision for Renewing Society*, Berkeley and Bangkok: Parallax Press, 1992, chapter 9.

42 See Sulak, *op. cit.* especially Part Two.

injunction to respect comes rather as a consequence of the fundamental value of non-violence, which also generates a whole host of other consequences (including the requirement for an ecologically responsible development, and the need to set limits to growth). Human rights do not stand out, as they often do in the West, as a claim on their own, independent from the rest of our moral commitments, even sometimes in potential conflict with these.

Connected with this, the politics of establishing rights in the West has often been surrounded with anger, indignation, the imperative to punish historic wrong-doing. From this Buddhist perspective comes a caution against the politics of anger, itself the potential source of new forms of violence.

Our aim here is not to judge between these approaches, but to point to these differences as the source of a potentially fruitful exchange within a (hopefully) emerging world consensus on the practice of human rights and democracy.

Leaving aside these theoretical considerations, the commitment of Buddhists of this persuasion to people-centred and ecologically-sensitive development makes them strong allies of those communities of villagers who are resisting encroachment by the state and big business, fighting to defend their lands and forests. This means that they are heavily into what we have identified here as a crucial part of the agenda of democratization in Thailand - decentralization, and in particular the recovery of local community control over natural resources. They form a significant part of the NGO community committed to this agenda.

But this mode of Buddhist spirituality remains very much a minority voice in Thai society. There have also been actions, by a relatively small minority of monks - not all of whom are actuated by this particular vision of Buddhism - in support of the agenda of alternative, community-centred development. For example, Phra Prachak Kuttajitto supported the protest of villagers who were trying to protect the Dong Yai forest reserve in the Northeast. He was arrested when the villagers were evicted. He "ordained" the trees, in order to create an additional sanction against felling them.

But this kind of action is rather rare. The great majority of monks understand their lives as quite separate from politics. In addition, we should take account of interpretations of Buddhism which have been militantly conservative. In the 70s, one monk, Kittiwuttho, gained notoriety for his anti-communist agitation. But these fortunately seem to lack dynamism at this moment.

It is to be hoped in the present climate that important new developments will come from those who are seeking a Buddhist underpinning of democracy. Here is another domain in which some further international intellectual exchange - already inaugurated by the International Network of Engaged Buddhists - might be valuable. This exchange has involved Buddhists of other countries (and of other branches of Buddhism - e.g., the Dalai Lama), as well as sympathetic enquirers of other faiths and outlooks. But we would all benefit from a widening of the circle of participants. —



Orientations for the Future

In retrospect, Thailand has made enormous strides in the macro-economic field in recent years. The restoration of democracy in 1992 was also a positive sign of the times. However, Thailand is still very much a society in ambivalent transition because the vestiges of authoritarianism, paternalism, elitism, and excessive nationalism are still omnipresent. A more dynamic parliamentary and state system is a necessary but not sufficient condition to overcome such impediments since these institutions are still imbued with many of the negative vestiges in question.

That is why the "alternative force" of non-governmental organizations, community groups and initiatives, the mass media, and concerned individuals can play a key role to check and balance state organs - whether parliamentary, executive, judicial or military. Civil society must ensure that the state does not overstep the confines of its powers, and accelerate a readiness to reform the negative traits which are still pervasive in Thai society. This alternative force is at the heart of civil society's call for more democracy, more development, and more respect for a broad-based vision of human rights which is not parochial but built on universal foundations.

In the march towards a deeper development of democracy and human rights, and even with a democratically elected government, Thais need to muster the political and social will to realize the wider vistas of democratization, decentralization and pluralism.

The vestiges of past authoritarian regimes have to be overcome by greater popular participation and community mobilization. Cultural discrepancies, embodied in discrimination by gender, race or other pretexts, have to be eliminated. This can be done by progressive laws and policies, but also by an extensive educational and socialization process - through community interaction and incentives for attitudinal and behavioral change - to create respect between different groups and protect the rights of those affected.

Power and resources should be devoted more to local and provincial areas so that people can take charge of their destinies more directly. The interests of marginalized groups, including non-Thais needing protection on Thai soil, should not be neglected. Pluralism in this strong sense means catering to a multiplicity of cultural groups by a responsive rather than monopolistic state. An equilibrium has to be established not only between state entities such as Parliament, the judiciary,

the executive, and the military, but also between state and non-state actors, including the business sector, non-governmental organizations, and the community at large.

But to this point, democratic struggles by Thais and international supporters have tended to hinge on curative rather than preventive approaches. The prospects for thoroughgoing remedial action in the face of human rights violations is blocked by vested interests and poor law enforcement.

For the future, our efforts must focus more on the preventive dimension of democracy and human rights. We must promote laws, policies and practices that can pre-empt problems rather than respond to them when it is too late. This approach has much to do with education and action to prevent poverty, such as responsive social security laws, and measures which can prevent exploitation, such as laws against child sexual exploitation. It is also related to the call for social programmes to satisfy people's material needs and ensure greater equity in society. (This is not to forget the need to confront the broad criminal networks that exist and that often penetrate or have allies in the precinct of statal institutions, even in Parliament itself.)

On the curative side, there must be concerted community pressure to hasten the reform of laws, policies and practices which perpetuate injustices, such as revolutionary and military decrees still on the books. Good governance is best achieved by community calls for accountability. This approach will help overcome the immunity of State officials who sometimes commit human rights violations.

Both the preventive and curative strategies have to be placed in an inter-disciplinary context. The allies of democracy and human rights have to be drawn from as broad a range of disciplines and life experiences as possible.

For the long-run, Thais need a comprehensive Agenda for Democracy and Human Rights. This agenda should include the following challenges:

- 1) Democratize the Constitution to constrain its exception clauses based upon national security, promote direct elections to the Senate, recognize justiciable rights, and reform the Constitutional Tribunal so that it is truly independent of the executive branch of Government.
- 2) Abide by the international perception of human rights and adhere to international human rights instruments, while avoiding unnecessary reservations and ensuring greater implementation at the local level.
- 3) Reform national security laws and policies which diverge from that which is internationally acceptable in a democratic society.
- 4) Liberalize the mass media, particularly the electronic media which is still controlled by the State, and promote freedom of information and expression.
- 5) Promote good governance and accountability of State officials and other power groups by having more public hearings and inquiries, and nullify those laws, such as self-amnesty decrees, which perpetuate official impunity.
- 6) Guard against religious distortions, by ensuring that religion is not distorted by a narrow, monolithic religious hierarchy, and discard those practices that discriminate against women.
- 7) Respect the rights of refugees and reject the application of negative aspects of immigration to asylum-seekers.
- 8) Adopt more effective anti-poverty strategies, including promotion of income distribution and resource allocations to help the poor, and establish indicators to measure inequity.
- 9) Initiate more effective social security and development measures, including a social security fund to help marginalized groups, family and child subsidies to help families in need, and access to credit, education, and technology so as to foster alternative occupations, including self-employment.

- 10) Promote greater decentralization of decision-making, by empowering local institutions and promoting more popular participation through elections of local leaders and provincial governors. Adopt social indicators to measure and propel greater political participation at local and national levels.
- 11) Enact a law against discrimination, promote equal opportunities, ensure quick remedies against abuses, and desegregate statistics so as to identify discrepancies based on discrimination and marginalization.
- 12) Nurture a cross-cultural educational process and link-ups between the youths of different communities to promote multi-cultural understanding.
- 13) Initiate affirmative action programmes to help the marginalized, such as guaranteed places for women in decision-making capacities in the Thai civil service.
- 14) Reform family law so that the vestiges of discrimination are discarded, such as in marriage and divorce.
- 15) Decriminalize adult prostitution laws but incriminate more effectively those who exploit prostitutes.
- 16) Counter *de jure* and *de facto* discrimination against women through social and legislative reform as well as long-term community mobilization with more gender consciousness.
- 17) Adopt more preventive and curative steps to combat child exploitation, abuse and neglect.
- 18) Reinstate the right to unionize for state enterprises and mobilize unions to promote broad-based democracy and human rights.
- 19) Promote respect for the rights of minorities and indigenous peoples, particularly in regard to language and culture.
- 20) Promote more community participation in environmental issues through public hearings, and provide for accountability of both the private and public sectors where they damage the environment, with the possible introduction of class actions.
- 21) Raise the professionalism of law enforcement personnel by providing more incentives and training on democracy and human rights, penalising corrupt elements, and promoting community networks to counter national and transnational criminal networks.
- 22) Promote wider access to the courts by establishing local courts and mobile and week-end facilities.
- 23) Counter bureaucratic maladministration by establishing special courts, administrative tribunals and ombudspersons to expedite proceedings against unjust or inept executive action.
- 24) Reinforce legal aid and assistance.
- 25) Improve the quality of informal dispute resolution, such as through village mediation, and paralegal training.
- 26) Promote popular participation in the administration of justice by, *inter alia*, coopting their help as lay magistrates and jury.
- 27) Establish an independent National Human Rights Commission with a proactive mandate and adequate resources, and promote its accessibility to local people through decentralized branches.
- 28) Establish human rights units in key ministries and government offices have a human rights section to promote respect for human rights and concomitant in-service training.
- 29) Foster dialogue across all power groups, including the military, business sector, and religious personnel, so as to promote peer pressure against human rights violators.
- 30) Reinforce the work of the "alternative force", such as non-governmental organizations and community groupings, as part of the civil society, and provide more tax exemptions and other incentives for their work as partners in the process of democracy and protection of human rights.

This comprehensive agenda is for Thai society and government. But what can the international community do to help? In particular, what can governmental and non-governmental aid organizations do?

Obviously, just about every one of the above 30 objectives could benefit from some outside help, if only in making available experience in other countries with analogous problems. For instance, during the time this report was being prepared, consultation was going on with various people associated with ombudsman offices in some Canadian provinces, sponsored by the Canadian embassy (relating to No. 23 in the above list).

But another very effective form of aid consists in supporting the work of NGOs, local and international, which are operative in Thailand. There is a great range of NGOs working in the field of human rights and democratic development, many of which are doing constructive and important work. Without in any way detracting from this broader range, we would like to single out a few fields of work which seem to us especially relevant to democratic development in Thailand.

Decentralization is a crucial issue, as we argued in Section IV. But this must take place on more than one axis. It requires effective measures to empower local authorities, through for example, tambon councils, or elected governors. But it also requires action at the base of society. As villagers learn to organize themselves to pursue their common goals, through credit unions, rice banks, or community action to support or oppose development projects, democracy becomes more of a reality in Thailand. And the more open the response to these advocacy groups, the more they are given scope to be heard in the process of national policy-making, the stronger and more stable this democratic life will become.

This suggests three fields of work which are particularly important for democratization.

- A) **Policy development.** The first involves those NGOs which are attempting to build the intellectual case for decentralization, through undertaking and publishing studies and brochures, as well as making available experience in other countries. (Example: the Local Government Studies Project at Chiang Mai University.)
- B) **Intermediary NGOs.** A second and perhaps more crucial field groups NGOs which are helping villagers and other local groups to set up various self-help organizations and advocacy groups. (Example: NET in the Northeast.) Giving aid to these could mean that an international body with a main interest in democracy and human rights would find itself supporting a diverse range of objectives, including rice banks, and peasant defense of the local ecology. But the paradox is only apparent. It is through the struggles around these material issues that Thai democracy is forming itself.
- C) **Conflict resolution.** Thirdly, there are those organizations which are trying to promote consultative mechanisms, and modes of conflict resolution, which can bring some grass roots input and negotiation into the operation of a Thai government bureaucracy which is still very wedded to top-down rule. (Example: Society for the Promotion of Non-Violence in Thailand.) Major advances on the second axis requires some serious progress on this one. Otherwise the proliferation of self-help and advocacy groups will just intensify the conflicts with an insensitive central administration; not a formula for the orderly development of democracy.

There are, of course, a great many other points at which outside help can be very useful and relevant. We have just been outlining three axes on which particularly effective action can be taken for democratization in contemporary Thailand, and of which the international community should take note. —

A NOTE ON TRADE UNIONS IN THAILAND

Freedom of association is guaranteed by the present Thai Constitution. However, it is not an absolute right and is subject to considerations of national security.

In this setting, the official attitude towards the role of trade unions has long been ambivalent. During the authoritarian era from the 1950s to the mid-1970s, unions were suppressed. They were even seen to be agents of Socialism or Communism, a taboo at the time. It is worth noting that Communism is still illegal in Thai law.

History has repeated itself recently. In 1991, after toppling the elected government, one of the first acts of the military junta, was to pass the State Enterprise Labour Relations Act, a law abolishing state enterprise unions. A key labour leader also disappeared and has not been heard of since; foul play is suspected.

Currently, the formation of trade unions in the private sector is allowed, but the authorities can compel the settlement of disputes, and ultimately the government has the right to forbid strikes. The main law on the subject is the Labour Relations Act 1975. Under today's democratically elected government, there has been a move to reinstate state enterprise unions, but a draft law to return the right of freedom of association to state enterprise employees has not yet been passed.

A recent observation of the US State Department on the right to freedom of association in Thailand is worth noting:

Labour unrest has been relatively minimal since a period of social upheaval in the mid-1970s. Because of the red tape involved in getting government approval for a work stoppage and the lack of understanding of proper labour procedures on the part of many union leaders, the

number of approved strikes has averaged fewer than 10 annually for the past 15 years - there were 7 in the first 6 months of 1993. Unauthorized strikes are far more numerous, with 103 occurring from January to June. In these work stoppages (deemed "unauthorized" because the law's procedures had not been followed) management often ends up making some of the concessions demanded by workers. However, gains from such strikes are frequently won only at the cost of excessive acrimony (by Thai standards) which could be avoided by a more effective bargaining process. There were also seven lockouts in 1993. In two of these instances, the Ministry of Labour determined that management had not bargained in good faith, as required by the 1975 labour law, so as to justify the lockout (Country Report on Human Rights Practices for 1993- Thailand, 1993, p. 15).

Tactics adopted by employers to counter the demands of strikers include dissolution of the company at stake, with consequent dismissal of employees. The employers would then set up a new company with the freedom to choose new workers.

The trade union movement also suffers because it is made up of small rather than large unions with key bargaining power. Many Thai workers are also agricultural and rural-based and are thus beyond the reach of urban trade unions.

The prospects for a fuller enjoyment of freedom of association as part of the participatory process is thus contingent upon not only liberalizing the constraints of the law, but also ensuring that the trade union movement develops larger unions with more bargaining power, accessible equally to the rural, agricultural sector.

In fact, the rate of unionization is very low in Thailand. An estimate is difficult, because the importance of the informal sector and seasonal migration from the countryside make it hard to establish a figure for the total number of workers who could in theory be unionized. But one estimate (given by Prof Sangsith) is that unionized workers represent about 3-4% of the labour force in 1994.

The reasons for this low rate fall into a number of categories.

1. The Structure of Industry.

The first is the very large proportion of small enterprises in Thai industry. 97.5% employ less than 100 workers. In effect, only 40% of the labour force are in firms with 300 employees and over. This makes the task of organizing the greater part of the work force virtually impossible.

This situation is aggravated by the policy of many employers to casualize or sub-contract an increasing number of jobs. The trade union movement has protested against this trend, and demanded that the government intervene to ensure that certain rights be granted to temporary workers. The government responded with a decree in 1989, but the trend continues.

2. The Nature of the Labour-Force.

Many workers are new migrants to the city. They often see themselves as temporary migrants, supplementing the meagre farm income of their families. In many cases, this really is so. In the dry season (January to March), when the demand for labour is at its lowest, a great number come from the countryside to find short-term employment in the cities. The number who would like to do so is considerably more than those who do (See Chalongsob Sussangkarn's study "The Thai Labour Market: A Study in Sea-

sonality and Segmentation", 1987, estimates the 2,396,360 seeking dry season employment, p. 18). These numbers show that this phenomenon will not disappear, and may grow. But many others, who in fact remain in the country for years, may see their real "home" as being back in the village, to which they plan to return. They do not see themselves as "proletarians", as having the permanent condition of workers, and hence their incentive to form and belong to workers' organizations is weak.

This pattern is reinforced by some employers, who deliberately seek workers in younger age-groups with this "temporary" mind-set. They often recruit preferentially young women (who see themselves as obligated to contribute to their parents' budget back home), and they sometimes have a policy of "retiring" their workers at 25-35 years, replacing them with a new stock of youngsters.

3. Weaknesses of the Trade Unions.

Unions in Thailand are very fragmented. Some individual dents as well. This means that the unions are not often in a position to hire adequate staff, and gather the data they need. This situation has been aggravated by the 1991 law mentioned above, which drastically changed the status of the unions in the state enterprise sector, relegating them to the role of "associations" (see below). These unions were not only strong in numbers, but played in some way a leadership role in the whole movement. Their forced decoupling from the labour congresses greatly weakened these latter.

4. The Legal Context.

Under the Sarit regime, unions were forbidden. In the liberal climate following the 1973 student demonstrations, and the return to democracy, a law was passed in 1975, under which Thai unions basically still operate. Some of the strengths and weaknesses of this legal context are:

- a. On the positive side, unionists help constitute a number of tripartite bodies, which play an important role in regulating the labour scene. These include: the Wage Committee, setting the minimum wage; the Labour Relations Committee, and the Labour Court, which settle disputes about alleged unfair labour practices, and can arbitrate in disputes; the Workmen's Compensation Fund Committee; and the Occupational Safety Standards Committee.
- b. On the negative side, unions stand under the provision of voluntary associations in general in existing Thai law, that they are not supposed to "be involved in politics". The kind of relationship between unions and political parties which exist in many countries with social democratic movements is prohibited. One important way that the union movement could contribute to democratization is therefore excluded. These legal disabilities must be lifted, as in the case of all associations (as recommended in the main report).
- c. Workers are protected from discrimination by employers for their union activity within already organized firms. But there is no protection for those involved in organizing a new union which is not yet officially registered. This is a severe obstacle to the expansion of trade unions.
- d. The 1991 law, which transformed the status of the unions in state enterprises, from full scale unions, to "associations", without the right to strike, to belong to labour congresses, and with the power only to "petition" for changes, has severely weakened the labour movement. The political context in which this was passed, one of military rule, in which the State Enterprise unions had also overplayed their hand, and alienated some of their natural allies, may explain the setback. But it is important to undo this rather drastic measure. That unions in state enterprises should not necessarily have the full stretch of freedom to strike or take other actions, that their opposite numbers do in the private sector, is fairly widely recognized. But the 1991 act goes way beyond giving expression to these legitimate concerns. The Chuan government has announced its intention to amend the law.

THAI SOCIAL INDICATORS ¹

- A. The people eat nutritious food which is good for their health:**
 - 1. Pregnant women eat properly.
 - 2. Children up to five years of age do not suffer from malnutrition.
 - 3. Children between 6-14 have sufficient food.
 - 4. The household does not eat raw meat.
 - 5. The household eats food with certified labels.
- B. The people have appropriate shelter and environment:**
 - 6. The household has a permanent shelter.
 - 7. The household arranges the home in an orderly fashion.
 - 8. The household has a toilet meeting sanitation standards.
 - 9. The household has sufficient drinking water.
 - 10. The household is not disturbed by nuisances.
- C. The people have access to basic social services:**
 - 11. Pregnant women are cared for before giving birth.
 - 12. Pregnant women are assisted at the time of giving birth to the child.
 - 13. Children under one year old are vaccinated.
 - 14. Children of primary school age are vaccinated.
 - 15. The household has knowledge of AIDS.
 - 16. The household knows how to prevent AIDS.
 - 17. Proper care is taken of children who are between 3 and 6 years old.
 - 18. Children of compulsory primary education age attend school.
 - 19. Children who have completed compulsory education continue with secondary education.
 - 20. Children who have completed compulsory education and who are unable to continue with formal education are able to be trained.
 - 21. Those between 14 and 50 years old in the household are literate.
 - 22. The family obtains news concerning livelihood, health and law at least once a week.
- D. The people are secure in life and property:**
 - 23. The household is safe in life and in property.
 - 24. The household is free from accidents.
- E. The people have a livelihood and sufficient income:**
 - 25. The household has a livelihood and every member has on average an income of not less than 15,000 baht per annum.
- F. The family can utilize family planning:**
 - 26. Where the wife is between 15 and 40 years old, she has access to family planning methods.
 - 27. Spouses have no more than two children.
- G. The people participate in the development process and choose their livelihood:**
 - 28. The household is a member of at least one local group.
 - 29. Members of the household use their right to vote honestly in the democratic process.
 - 30. The household participates in looking after the common property and other development activities.
- H. The people develop their mind and spirit:**
 - 31. Members of the household practice a religious activity at least once a week.
 - 32. Members of the household are not addicted to alcohol.
 - 33. Members of the household are not addicted to cigarettes.
 - 34. The household participates in traditional and cultural activities in the locality.
 - 35. The elderly are looked after by the household or the community.
- I. The people are conscious of the need to protect natural resources and the environment and participate in doing so:**
 - 36. The household has an activity to protect and develop natural resources.
 - 37. The household has an activity to prevent damage to and protect the environment.

¹ Adapted from *Training Manual for Basic Minimum Needs Indicators in Rural Areas*. Bangkok: Ministry of Interior, 1989, pp. 108-109 (in Thai). See further: *Report on the Quality of Life of the Thai People 1991*. Bangkok: Ministry of Interior, 1991 (in Thai).

SEVENTH NATIONAL SOCIAL AND ECONOMIC DEVELOPMENT PLAN TARGET INDICATORS FOR CHILDREN

1. Health:

- reduce the rate of child birth by limiting the national birthrate to 1.2% by the end of the Seventh Plan period.
- reduce maternal mortality, infant mortality (under 1 year old) and child mortality (under 5 years old) to 0.3, 23 and 35 per thousand respectively by the end of the Plan.
- reduce the deaths and illnesses of children and young persons due to preventable diseases, e.g. tetanus and polio, to no more than 15.0 per 10,000 persons.
- protect children from the spread of AIDS.
- reduce the deaths and illnesses of children and young persons due to infectious diseases, e.g. reduce illness from diarrhoea for under five year olds to no more than 3,500 per 10,000 persons.
- reduce the deaths of children and young persons due to accidents by not less than 30% of the rate under the Sixth Plan.
- reduce the deaths and injuries of children and young persons due to urban and industrial causes.
- prevent an increase in the illnesses and deaths of children and young persons due to cancer.
- prevent an increase in the illnesses of children and young persons due to thalassaemia.
- control the rate of tooth-related problems, e.g. 20% of pre-school children should be free from rotten teeth.
- reduce the rate of children having mental problems by not less than 30% of the rate under the Sixth Plan.

- ensure that at least 80% of children and young persons have proper height and weight.

2. Nutrition:

- ensure that at least 70% of newly born infants are over 3,000 grammes in weight, and at least 93% are over 2,500 grammes.
- reduce the lack of protein for under five year-olds, e.g. not more than 10% of the children should suffer from first degree malnutrition.
- reduce iodine deficiencies in children, e.g. less than 1% of newly born infants should suffer from this.
- reduce iron deficiency in 0-14 year olds and pregnant women to not more than 10%.
- reduce vitamin A deficiency among 0-5 year olds to not more than 10%.
- ensure that the rate of breast-milk feeding in the first three months of the infant is at 30%.
- reduce the rate of obese children to not more than 10%

3. Mind and spirit:

- aim for proper development of 0-5 year olds.
- prepare at least 75% of pre-school children between 3-5 years old before the end of the Seventh Plan.
- ensure that all school age children attend primary school.
- ensure that all school age children complete primary school and that at least 90% do so in six years.

- reduce the failure rate in every class at the primary school level to not more than 1% and reduce drop-out rates.
- expand basic education from 6 to 9 years and ensure that not less than 73% of those who complete the sixth grade continue with secondary education.
- ensure that 34% of 15-17 year olds reach the higher level of secondary education, whether in formal or non-formal education during the Seventh Plan.
- ensure that young persons who are out of school are developed in mind and spirit.
- ensure that children and young person have knowledge of science and technology.
- support gifted children.

4. Occupations and work:

- ensure that all children and young persons who have completed education have knowledge and a basic readiness to work.
- ensure that 800,000 young persons out-of-school are trained in the short-term.
- control the unemployment rate of young persons so as not to exceed that of the Sixth Plan.
- protect young persons in employment by inspecting 25,000 work places and ensure that at least 30% of young persons in employment have additional education.

5. Social, Moral, Political and Administrative Aspects:

- ensure that 90% of children and young persons have good character.
- ensure that 90% of children and young persons use their time suitably and participate in the development of the community and country.
- ensure that 90% of children and young persons know how to use and preserve natural resources and the environment.
- ensure that 90% of children and young persons participate in preserving their heritage and culture.
- ensure that 90% of children and young persons abide by morality and act properly.
- ensure that at least 80% know the ideals and values of politics, the democratic process and constitutional monarchy.
- ensure that at least 80% have a spirit of leadership and confidence in nationalism.

6. Special Groups of Children and Young Persons:

- prevent the proportion of children and young persons in difficulties from exceeding that under the Sixth Plan.
- ensure that 30% of children and young persons in difficulties, without distinction as to race and religion, are assisted and protected properly, and have their basic needs fulfilled.

DEMOCRATIC DEVELOPMENT WORKSHOP BANGKOK, THAILAND NOVEMBER 24 AND 25, 1994

Approximately sixty people from different sectors of Thai society gathered at the Thai Parliament Buildings in Bangkok for two days of intense discussion about democratic development on November 24 and 25, 1994. NGOs, academics, slum dwellers, rural people, business people, community organizers and politicians attended the meeting, co-sponsored by ICHRDD, the Thai Parliamentary Committee on Justice and Human Rights and the Campaign for Popular Democracy.

Workshop deliberations examined four of the crucial challenges to Thai democracy identified in the study, namely security of the person, welfare rights, non-discrimination, and participation rights. The participants focused their energies on the latter two themes, examining the impact of Government policies on marginalized groups in Thai society and proposals to decentralize local administration. Although the study had been completed in the Summer of 1994, the issues it examined became the subject of a major public debate over constitutional reform during the fall. In particular, the discussions on local administration were timely as they coincided with the Thai Parliament's consideration of constitutional reforms to democratize local government. On the day before the workshop began, the Parliament Buildings were the site of large demonstrations by village headmen, opposed to the government's proposed reforms to democratize local government.

The workshop took a critical look at the process of modernization that has occurred in Thailand, and examined how the traditional hierarchical state and entrenched bureaucracy are impeding democratic development and citizen participation. With the May 1992 crackdown on student protesters still fresh in people's minds, citizens' organizations are mindful of the need to consolidate democratic reform by having more control at the local level. For the democratic experience to be widened and deepened in Thailand, it is crucial that the issue of decentralization be addressed. (In March 1995, the Government passed reforms which are seen as the first step in decentralizing administrative power granting Tambon Councils (village-level administrative units) a greater say in community developments).

Again and again, community representatives at the workshop expressed their desire to be involved in the decisions that affect their future. This was particularly the case with natural resource management. Many participants discussed the problems with the Pak Moon Dam development in the Northeast. Villagers were angry that development plans had gone ahead without adequate consultation and were demanding compensation for families who had been evicted. (A compensation package was negotiated in March).

This experience will provide the foundation for the Centre's future work on democratic development in Thailand. During the coming years, the Asia Programme will work with its partners to develop programmes which promote women's rights, land reform, the development of national human rights mechanisms and the development of democratic local administration. —